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A STUDY OF THE COURT PRACTICES OF MASSACHUSETTS
DEALING WITH DOMESTIC RELATIONS, COMPARED WITH TWENTY-
TWO OTHER STATES HAVING MODERN COURT SYSTEMS, OR
HAVING SOME FORM OF DOMESTIC RELATIONS COURT

A Thesis

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CHAPTER I

INTRODUCTION

Every work day of the year harassed men and women enter our courts hesitatingly because of domestic relations problems, forced there by desperate necessity. They come seeking a cure for their social ills, marital discord, which threatens the breakdown of the home. One may liken these distressed persons to sick patients who visit a doctor to get needed treatment. But the germ, which has attacked husband and wife, is far more insidious than that affecting the sick patient, because it strikes the vital life and happiness of the couple, leaving more or less permanent scars. Its damage penetrates deeper where offspring are concerned, and the vestiges of the evil are felt beyond the immediate family circle. A grave responsibility therefore rests in the courts to handle properly or salvage the situation. It consequently behooves us to look to the courts and ask ourselves how adequately are they meeting this responsibility.

A deep and general interest has developed during recent years in the way in which courts handle the varied problems of family life. It is recognized that the home is on the verge of breakdown because of the large ratio of divorces, and that the whole future of social life is in jeopardy. Legal ac-

tion has been resorted to for a release from marital bonds, but courts, because of antiquated forms of procedure, have been static factors instead of dynamic forces in giving to the community a more sustaining welfare program.¹ The problem of settling human relations, according to individual circumstances, has not been given legal sanction, and cold legislative pronouncements do not enable the court to dispense with justice.

The writer, a member of the bar for twenty-three years, has chosen this subject, a study of the court practices in Massachusetts dealing with domestic relations, because in her practice with family cases she has felt the general need of change in the system of Massachusetts courts. She has looked to the written law and to existing forms of practice in the Commonwealth, which include the courts, probation officers, the police and local welfare agencies. Focus has been given to three factors: 1. legislation itself--to see its comprehensiveness, as well as its limitations; 2. administrative policies, which can dispense justice through legal interpretation--judges have had to reconcile these with the philosophy of law, its purposes, making use of such

1 Jonah J. Goldstein, The Family in Court, p. 19.

interpretative authority as is revealed in historical precedents, and objectives of original rulings; 3. court functioning--putting into action that which has been legislatively created. As the late Justice Oliver Wendell Holmes once said: "Judges are not the mere automata of established rules of law, but are lawmakers, whether they would be or not, and so must accept responsibilities for the kind of law they make."²

In going through the reading material in preparation for this thesis, the writer has observed that there are many different practising forms of jurisprudence and treatment. These cover divorce, separation, maintenance, custody of children, parental neglect and irresponsibility, juvenile delinquency. Courts on the whole have not been unified, nor humanized, to take care of domestic problems, nor has there been an uniform system set up to reduce the domestic evils.

It is interesting to note the individuality of the courts in their practices. Forceful judges, restive under the barriers of confining legislative restrictions, have utilized administrative powers as a tool to social vision and planning, being veritable Houdinis in wedging their ideas through the verbiage of the law. Procedure is akin to that practised in juvenile courts, in that attempts are being made toward informality and away from barriers of technicality and

² Oliver Wendell Holmes, "The Path of the Law," Harvard Law Review, Volume 10, No.8, March 25, 1897, pp.467-468

abstract reasoning. Courts try to reach justice for the individual through the use of interprofessional skills of other social sciences than the legal, dealing with human nature and human behavior, namely, the cooperation of social workers, doctors, psychologists and psychiatrists.

A. Purpose

The purpose of this thesis is to compare present court practices in Massachusetts dealing with domestic relations with those of twenty-two other states having modern systems in the form of family courts. Such questions will be endeavored to be answered as: 1. What is the present judicial organization for dealing with family problems? 2. What is the modern objective of divorce and separate support proceedings, and hearings for the so-called criminal offenses against a family member? 3. How far shall the law go in the solution of domestic difficulties? 4. What steps should be taken to remedy such deficiencies as exist? 5. How may the resources of other professionals be utilized in the treatment of family problems? 6. If the value of interprofessional services is recognized by the court, what should its position be with respect to the status of the law?

B. Scope

This paper is limited to a study of twenty-two States which have attempted to have some form of domestic relations or family courts, showing variability in pattern,

as well as points of similarity in their handling.

For the purpose of better understanding an outline will be given of what is being done in the Commonwealth of Massachusetts. A description of domestic relations courts of the present day will be given, as well as a history, to give perspective and clarification. Certain aspects of law, social work, and type of personnel will be explained.

This thesis will point the extent to which existing family courts function, and the parallel lines on which they operate.

C. Sources of Data

The writer has interviewed Judge Jennie Loitman Barron, Assistant Justice of the Boston Municipal Court, Judge John J. Connelly, Justice of the Boston Juvenile Court, Mr. Albert B. Carter, State Commissioner of Probation, Miss Ruth B. Stone, Probation Officer, Third District Court of Eastern Middlesex, Cambridge, Mr. Arthur Halleck, secretary of the Massachusetts Childs Council, Miss Frances Marley, secretary of the Boston Legal Aid Society. She has communicated with the secretary of the National Board of Legal Aid, the National Probation Association, the American Bar Association, for suggestions and bibliography. The clerks or probation officers of the following district courts in Massachusetts have been reached for information as to the practices in their courts: Springfield, Worcester, Lowell, Law-

rence, Brockton, Newton, Cambridge, Salem, Roxbury, Quincy. In addition she has read bibliography on the subject of social jurisprudence and domestic relations courts, and the laws of the several States.

D. Limitations

Much of the reading material is confined to literature prior to 1935. Whatever writing appears in later publications does not bring information on advanced methods, or analysis of existing functions. There have not been any recent studies or laboratory findings regarding the family courts for guidance of organizations interested in creating a domestic relations division in their present judicial system. Recourse to social records is not possible because these are confidential, hence the inability to glean desired illustrative material.

E. Value of Study

It is hoped that this paper will stimulate thinking and action directed toward the establishment of domestic relations courts in Massachusetts, by pointing to the possibilities for improvement.

CHAPTER II

THE MASSACHUSETTS COURT SYSTEM

Orthodox Procedure

The courts in the Commonwealth of Massachusetts as a whole operate along orthodox procedure. Cases are heard in the usual formal method. Attorneys represent their clients; there is presentation of the evidence before a judge, who makes decisions according to established principles on such legally admissible evidence as is offered by witnesses.

Types of Cases Involved in Domestic Relations

The list includes offenses against children, neglect and dependency, contributing to delinquency (these include not only cases of sex offenses against children, but other types of cases covered by criminal law. Failure to comply with school attendance laws or to furnish medical care, and other types of parental obligations are dealt with under neglect, or contributing to delinquency or dependency). Other types of cases are assault and battery, desertion, non-support, establishment of paternity and support of illegitimate children, divorce, separate support, annulment of marriage, alimony, custody and maintenance of children, adoption, guardianship.

Court System

There are no unified courts for the handling of

domestic relations matters. The court system hearing these cases may be Trial Justices (in towns), District or Municipal Courts (in cities), the Boston Municipal Court; the Juvenile Court in Boston, or juvenile sessions in the District Courts (other than Boston Municipal Court); the Probate Courts, or Superior Courts (located in county seats); and the Supreme Judicial Court.

Jurisdiction of Criminal Cases

The district court has original and concurrent jurisdiction with the Superior Court of all misdemeanors and all felonies punishable by imprisonment in state prison for not more than five years.¹

Trial justices have jurisdiction concurrent with the superior court and appropriate district court of all crimes which may be subject to penalties of fine or forfeiture of not more than fifty dollars or of imprisonment for not more than six months or both.²

The Superior Court has original jurisdiction of all crimes, and appellate jurisdiction of crimes tried before a district court or a trial justice.³

1 Mass. G. L., Ch. 218, s. 26.

2 Ibid., Ch. 219, s. 18.

3 Ibid., Ch. 212, s. 6.

Divorce

The Probate Court has original and concurrent jurisdiction with the Superior Court over divorce.¹ (Cases are infrequently heard in the Superior Court. It is estimated by the clerk of courts that not more than one libellant a year files a petition in Middlesex County.)

Although the Probate Court was established in 1784, it is interesting to point out that its jurisdiction for various procedures began as follows:

1851 - Adoption of Children²

1858 - Appointment of Guardians of Minors³

1922 - Original and concurrent jurisdiction over divorce⁴

Separation

The Probate Court has jurisdiction in cases where husband fails without justifiable cause to provide suitable support for his wife, or deserts her, or if wife, for justifiable cause is actually living apart from her husband, or if the husband is deserted by the wife or is actually living apart from his wife for justifiable cause.⁵

1 Mass. G. L., Ch. 208, s. 6.

2 William T. Davis, Bench and Bar of the Commonwealth of Massachusetts, p. 324.

3 Guy Newhall, Settlement of Estates, p. 33.

4 Acts and Resolves of Mass., 1922, Ch. 542, s. 3.

5 Mass. G. L., Ch. 209, s. 32.

Annulment of Marriage

Annulment proceedings may be filed and heard in¹
the Probate Court.

Adoption of Children

Petitions for adoption are filed in the Probate²
Court.

Guardianship of Minors

Appointments of guardians are made in the Probate³
Court.

Adjudication of Paternity in cases of Illegitimacy

These cases may be heard in the superior or district⁴
court.

Desertion and Non-Support

Proceedings shall be begun in either the district or⁵
superior court.

Custody of Children

Where there are divorce proceedings pending in the
Probate Court, the law provides that, upon application, such
order shall be made relative to the care and custody of minor
children as may be considered "expedient and for the benefit
of the children."⁶

1 Mass. G.L., Ch. 207, s. 14.

2 Ibid., Ch. 210, s. 1.

3 Ibid., Ch. 201, s. 1.

4 Ibid., Ch. 273, s. 11.

5 Ibid., Ch. 273, s. 2.

6 Ibid., Ch. 208, s. 19.

1

The statute further states that:

in making an order or decree relative to the custody of children pending a controversy between their parents or relative to their final possession, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody or possession.

Alimony of Wife and Maintenance of Children

The Probate Court may order payment of alimony to wife as well as maintenance of children--these pending decree,
 2
 and after decree.

Custody and Maintenance of Children under Separate Support

The Probate Court may also give orders as to the
 3
 custody and maintenance of children.

Boston Juvenile Court, or Juvenile Sessions of District Courts

These courts have jurisdiction over a "delinquent child"--a child between seven and seventeen who violates any city ordinance or town by-law, or commits an offense not punishable by death or by imprisonment for life; and a "wayward child"--a child between seven and seventeen years of age who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him to lead an im-
 4
 moral, vicious or criminal life.

1 Mass. G. L., Ch. 208, s. 31.

2 Ibid., Ch. 208, sections 17, 28, 31.

3 Ibid., Ch. 209, sections 32 and 37.

4. Ibid., Ch. 119, s. 52.

They have concurrent jurisdiction with the district
¹
 courts in cases of neglected children.

The Boston Juvenile Court or a district court, except the Municipal Court of the City of Boston, upon a complaint made by any person that any child under sixteen years of age within its jurisdiction, by reason of orphanage, or of the neglect, crime, cruelty, insanity or drunkenness or other vice of its parents, is growing up without education, or without salutary control, or without proper physical care, or in circumstances exposing him to lead an idle and dissolute life, or is dependent upon public charity, may issue a precept to bring such child before said court, and shall issue a notice to the department, and shall also issue a summons requiring the department or person to whom such notice or summons is directed to appear before said court at the time and place stated therein, to show cause why such child should not be committed to the department or be otherwise provided for. Such summons shall be issued to at least one of the parents of the child, if either of them is known to reside within the commonwealth, and if after reasonable search no such parent can be found within the commonwealth, to its lawful guardian, if there is one known to be so resident, and if not, to the person, with whom such child last resided, if known; otherwise, to some suitable person to act in behalf of such child.

Proceedings Against Children

The statute regarding delinquent children states
²
 that the law

shall be liberally construed so that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings.

Another provision reads:

1 Mass. G. L., Ch. 119, s. 42.

2 Ibid., Ch. 119, s. 53.

Courts shall designate suitable times for the hearing of cases of children under seventeen years of age, which shall be called the juvenile session, for which a separate docket and record shall be kept. Said session shall be separate from that for the trial of criminal cases, shall not, except as otherwise expressly provided, be held in conjunction with other business of the court, and shall be held in rooms not used for criminal trials; and in places where no separate juvenile court room is provided, hearings, so far as possible, shall be held in chambers. No minor shall be allowed to be present at any such hearing unless his presence is necessary, either as a party or as a witness; and the court shall exclude the general public from the room, admitting only such persons as may have a direct interest in the case. ... ¹

Criminal Proceedings Against Children

²

This statute reads:

Criminal proceedings shall not be begun against any child between seven and fourteen years of age, except for offences punishable by death or imprisonment for life, unless proceedings against him as a delinquent child have been begun and dismissed as required by section sixty-one.

³

The latter section states:

If it be alleged in a complaint made...that a child has committed an offence against a law of the commonwealth, or has violated a city ordinance or town by-law, and the court is of the opinion that his welfare, and the interests of the public, require that he should be tried for said offence or violation, instead of being dealt with as a delinquent child, the court may, after a hearing on said complaint, order it dismissed.

Statutes Giving Right to Case Investigations

Regarding children:

¹ Mass. G. L., Ch. 119, s. 65.

² Ibid., Ch. 119, s. 74.

³ Ibid., Ch. 119, s. 61.

Every case of a wayward child or a delinquent child shall be investigated by the probation officer, who shall make a report regarding the character of such child, his school record, home surroundings and the previous complaints against him, if any. He shall be present in court at the trial of the case, and furnish the court with such information and assistance as shall be required. At the end of the probation period of a child, who has been placed on probation, the officer in whose care he has been shall make a report as to his conduct during such period. ¹

Regarding divorce:

Any justice of the superior court or judge of a probate court wherein any libel for divorce is pending may appoint an attorney to investigate and report to the court in relation thereto and may direct such attorney, or any other attorney, to defend the libel. The attorney may be appointed either before or after a decree of divorce nisi has been granted, and may enter objections to such decree nisi becoming absolute in the same manner as the libellee. His compensation shall be fixed by the court, and shall be paid by the county where the libel is pending together with any expenses approved by the court, upon certificate by a justice or the judge thereof to the county treasurer. The state police, local police and probation officers shall assist the attorneys so appointed upon his request. ²

Provisions for Mental and Physical Examinations

Regarding children:

Prior to the commitment, by way of final disposition to any public institution or to the department, of a child adjudged to be a delinquent child, the court may cause such child to receive thorough physical and mental examinations, under rules and regulations prescribed by the commissioner of mental health. The court shall cause copies of the reports showing the results of such examinations and of the investigations made by the probation officer to be forwarded to the superintendent of the institution to which such child is committed or to the department, as the case may be, with the warrant of commitment. ³

1 Mass. G.L., Ch. 119, s. 57.

2 Ibid., Ch. 208, s. 16.

3 Ibid., Ch. 119, s. 58A

Regarding mental condition of persons coming before any court:

In order to determine the mental condition of any person coming before any court of the commonwealth, the presiding judge may, in his discretion, request the department to assign a member of the medical staff of a state hospital to make such examinations as he may deem necessary. No fee shall be paid for such examination but the examining physician may¹ be reimbursed for his reasonable traveling expenses.

Regarding mental condition of certain persons held for trial:

Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility.²

The courts in Massachusetts vary in practice. Some have physicians on their staff; others use public or private agencies. It is discretionary with the judge as to the need of examinations.

Age, for the determination of crime or delinquency, is chronological not mental age.

Proceedings in Divorce Hearings may be according to Courts of Equity or Ecclesiastical Courts

The court may, if the course of proceeding is not specially prescribed, hear and determine all matters

1. Mass. G.L., Ch. 123, s. 99.

2. Ibid., Ch. 123, s. 100A.

coming within the purview of this chapter according to the course of proceedings in ecclesiastical courts or in courts of equity, and may issue process of attachment and execution and all other proper and necessary processes.

Uniform Rules of Courts

The justices, or a majority of them, of all the district courts, except the municipal court of the city of Boston, shall from time to time make and promulgate uniform rules regulating the time for the entry of writs, processes and appearances, the filing of answers and for holding trials in civil actions, the preparation and submission of reports, the allowance of reports which a justice shall disallow as not conformable to the facts, or shall fail to allow by reason of physical or mental disability, death or resignation, the reporting of cases reserved for report when a justice shall fail to report the same by reason of physical or mental disability, death or resignation, the granting of new trials, and the practice and manner of conducting business in cases which are not expressly provided for by law, including juvenile proceedings and those relating to wayward, delinquent and neglected children.²

Administrative Committee to Recommend Uniform Practices and to Coordinate the Work of the Courts, to Act in Appeals of the District Court

There shall be an administrative committee of district courts, which shall consist of the three presiding justices for the time being designated by the chief justice of the supreme judicial court...to act in the appellate districts of district courts, other than the municipal court of the city of Boston. The committee shall be authorized to visit any district court, other than the municipal court of the city of Boston...to recommend uniform practices...and to superintend the keeping of records by clerks... .

To promote coordination in the work of the courts, the administrative committee may call a conference of any or all of the justices of the district courts, including the municipal court of Boston, or of other officials connected with such courts...³

1 Mass. G.L., Ch. 208, s. 33.

2 Ibid., Ch. 218, s. 43

3 Ibid., Ch. 218, s. 43A

Preliminary Hearings, Recital of Facts to Clerk of Courts, or to Probation Officers

It is within the province of administrative policy to allow persons about to make a complaint, but who wish to prevent the case from going before the open court for trial to talk with the clerk of courts or the probation officer regarding the circumstances of the individual case. Sometimes the matter can be disposed of by interviewing both husband and wife, or members of the family group, or by investigation of the situation. At other times a preliminary hearing is given by the judge to determine whether complaint shall¹ be issued or not.

Powers of a Probation Officer

A probation officer shall not be an active member of the regular police force, but so far as necessary in the performance of his official duties, shall except as otherwise provided, have all the powers of a police officer, and if appointed by the superior court may, by its direction, act in any part of the commonwealth. He shall report to the court, and his records may at all times be inspected² by police officials of the towns of the commonwealth.

Duties of a Probation Officer

In addition to the other duties imposed upon him, each probation officer shall, as the court may direct, inquire into the nature of every criminal case brought before the court under the appointment of which he acts, and inform the court, so far as is possible, whether the defendant has previously been convicted of crime and in the case of a criminal prosecution before said court charging a person with an offence punishable by imprisonment for more than one year the probation officer shall in any event present to the court such in-

1 Acts and Resolves of Mass., 1945, Ch. 293

2 Mass. G. L., Ch. 276, s. 90.

formation as the board of probation has in its possession relative to prior criminal prosecutions, if any, of such person and to the disposition of each such prosecution, and all other available information relative thereto, before such person is admitted to bail in court and also before disposition of the case against him by sentence or placing on file or probation. When it comes to the knowledge of a probation officer that the defendant in a criminal case before his court charged with an offence punishable by imprisonment for more than one year is then on probation in another court or is then at liberty on parole or on a permit to be at liberty, such probation officer shall forthwith certify the fact of the presence of the defendant before his court to the probation officer of such other court or the parole authorities granting or issuing such parole or permit to be at liberty as the case may be. He may recommend to the justice of his own court that any person convicted be placed on probation. He shall perform such other duties as the court requires. He shall keep full records of all cases investigated by him or placed in his care by the court, and of all duties performed by him. Every person released upon probation shall be given by the probation officer a written statement of the terms and conditions of the release.¹

Qualifications, Appointment, Tenure of Office, Salaries of Probation Officers

There are no provisions regarding necessary qualifications of probation officers. They do not come under civil service. Their appointment, tenure of office and salary are determined in the following manner:

The superior court, the chief justice of the municipal court of the city of Boston, subject to the approval of the associate justices thereof, and the justice of each other district court and of the Boston juvenile court may appoint such male and female probation officers as they may respectively from time to time deem necessary for their respective courts... All officers so appointed shall hold office during the pleasure of the court making the appointment.²

1 Mass. G. L., Ch. 276, s. 85.

2 Ibid., Ch. 276, s. 83.

This same section provides that the courts of appointment shall fix the compensation of each probation officer, subject to the approval of county commissioners.

Appointment of Police, in connection with Domestic Relations Cases

The local and state police departments appoint or assign certain police officers to hear and investigate cases coming to their attention. Persons appearing before these police officers may be the husband or the wife, or some member of the family, neighbor, or friend. Representatives from public and private agencies as well as courts refer cases to police officers.

Police officers and probation officers may assist in the investigations involving questions of care, custody or maintenance of minor children, as provided for in the law.¹

Department of Public Welfare

Precedent for accepting children for care without court commitment by a public agency was established by Massachusetts as early as 1882, when the state child-placing program began.²

The Department of Public Welfare may provide for the maintenance of children under the age of twenty-one, dependent on public charity, upon written application of the

¹ Mass. G. L., Ch. 215, s. 56A

² Agnes K. Hanna, "Dependency and Neglect Cases in the Juvenile Court," National Probation Association Yearbook, 1941, pp. 136-162.

parent or guardian, or if no parent or guardian, of a friend, or of the board of public welfare of the town where such¹ child is found.

Local boards of public welfare make report and recommendations to courts regarding cases of desertion, non-support, illegitimacy, etc.

Society of Prevention of Cruelty to Children and Other Agencies

This society as well as other agencies may make complaint to the court. "Whenever a child is before any court as a neglected child and has not attorney, any person may, with the court's consent, act for him."²

Elements and factors in neglect cases are: physical, moral, medical neglect; physical cruelty; intemperance, divorce, desertion, separation of parents; non-support; semi or full orphanage; illegitimacy; sex acts (indecent assault, carnal knowledge, unnatural acts); delinquency; insanity; feeble-minded; forced marriage.

Distinctions are made between the powers of the probate and the juvenile courts to decide questions of custody of children. The juvenile court has the right to decide only where the child has been found to be neglected, delinquent or wayward. The probate court awards custody and maintenance in cases where there is a divorce or separation petition before them, or on petitions for guardianship when

1 Mass. G. L., Ch. 119, s. 38.

2 Ibid., Ch. 119, s. 48.

parents are unfit.

There are other differences to be observed between these two, namely that the juvenile court has for its aim the rehabilitation of inadequate or broken homes, which is not the specific function of the probate court.

The district court hears adult cases belonging to the domestic relations field in the criminal division. The legal object in crime is to determine whether the accused is guilty beyond a reasonable doubt. Consideration of social factors are not found in statutory verbiage. Administrative policies of the particular court will determine how these will be treated.

Attention is called to the fact that socialization procedures depends on the interpretation of principles of equity. This is practised in juvenile courts, but is not frequently resorted to in probate courts, although it appears authority exists for such.¹

1 Mass. G. L., Ch. 208, s. 33.

CHAPTER III

FEATURES OF DOMESTIC RELATIONS COURTS; POSSIBILITIES IN A MODERN JUD- ICIAL SYSTEM HANDLING FAMILY SITUATIONS

AND

HISTORY OF DOMESTIC RELATIONS COURTS

A. Features of Domestic Relations Courts; Possibilities in a Modern Judicial System Handling Family Situations

Description

Courts of domestic relations are those which attempt to bring legal procedure, as it affects family life, into harmony with social facts and needs.

Their aim, as stated by Judge Charles W. Hoffman, of the Domestic-Relations Court of Cincinnati, Ohio, is:

the consideration of all matters relating to the family in one court of exclusive jurisdiction, in which the same methods of procedure shall prevail as in the juvenile court, and in which it will be possible to consider social evidence as distinguished from legal evidence. In fact, providing for a family court is no more than increasing the jurisdiction of the juvenile court and designating it by the more comprehensive term of family court.¹

Admixture of Criminal and Civil Jurisdiction

These courts are an admixture of criminal and civil jurisdiction, each court exercising concurrently the peculiar power it possesses along these lines for the welfare or reconstruction of the family. A variety of types of family

¹ Charles W. Hoffman, "Social Aspects of the Family Court," Journal of Crim. Law and Crimonology, Nov. 1919, pp. 409-22

courts exist. Some have originated by legislative act, some by broad interpretations of administrative powers. It is of interest in the study to note how each of these courts has developed its own manner of doing, how each has been able to take the cold letters of statutes and build up and incorporate into them an unwritten law of social service, based on human understanding. In reading through legal phraseology, no inkling is given as to the breadth of services necessary, nor amount of social understanding involved. Nor can there be seen the extent of vision, the kindness, the helpfulness and cooperation on the part of lay persons and professionals connected with the case.

Court social work

The social work of the court, where it exists, is usually carried out by the probation officer. Sometimes advising and stimulating the members of the family who need special help is done by social workers in outside agencies. Where long continued supervision of a family group is required, the question arises as to which agency shall be entrusted with the work. If obviously more than one agency is advisable, the judge or probation officer selects the agencies. The latter after conferences decide which organization shall go forward with the case, or the best method in which all agencies can cooperate in the interest of the family.

Court unification

Unification of courts into one system, instead of

piecemeal justice in the field of domestic relations, has been one of the objectives of the domestic relations courts movement. This would give an opportunity of hearing both the parents and the child's cases together. The one against the parents might be a strictly criminal proceeding with penalties, the other a civil proceeding protecting the child. The civil rights of the family would in both cases be entitled to protection.

Judge Goldstein of the Domestic Relations Court of New York City has said that:

problems affecting the integrity of the family logically belong to a Family Court. It is true they involve legal questions, but if decisions are merely legalistic they may and do work grave injustice to parent and child.¹

Diversity in organization and administration

Although great diversity exists in the organization and administration of these courts, there is fairly general agreement regarding the broad principles which govern their jurisdiction and procedure.

Court both a judicial body and a social agency

The question is often asked whether the court in the general social structure is a purely judicial body, or whether it has attributes of a social case work agency. Perhaps the way to answer the query, which has no clear-cut reply, is to state that in discharging its functions the court operates both as a preventive and as a correctional agency, following

1 Jonah J. Goldstein, The Family in Court, p. 143

along the ideas basically incorporated in juvenile courts. It maintains within itself power to control, which is a starting point for rehabilitation. An authoritarian role is necessary in many instances. But the court brings to the assistance of the family, with the aim and purpose of social jurisprudence, all services essential to the treatment of the problem at hand, relegating to the background the legal side of the work. The family is given whatever treatment the law authorizes the court to extend, references being made to statutes governing the situation, to ascertain the breadth or limitation of powers. Social services for rehabilitation or protection are available through the statute which enables the court to request investigation and report from probation officers. On the criminal charge, instead of commitment to jail, constructive aid may be given to start anew, with opportunity for restoration of lost morale and change in habits.

Extent of legal procedure to solve domestic difficulties

Another question is how far should a law go to solve domestic difficulties.¹ The court should go to the extent of enforcing the fulfillment of legal rights and obligations of the family to the best of its ability. In cases where the substantive law goes beyond practical boundaries of effective legal action, or is incomplete, the law itself needs modification, revision. The substantive law covers the duties and

¹ U.S.Children's Bureau, The Child, the Family and the Court, Publication No. 193, 1937, p.24.

obligations of the relationships between husband and wife, parent and child, guardian and ward. We are in need of uniform desertion, nonsupport and divorce laws. Our lack of universality in outlining duties and obligations of the marital state is demonstrated by this failure.

Legal limitations in court procedure

Dean Emeritus Roscoe Pound, of Harvard Law School,¹ pointed to five legal limitations in court procedure: 1. difficulty in getting the truth in a family tangle. There are problems involved in ascertaining these due to legal rules to be applied in evidence. Where these are possible of attainment, there is suppression of vital elements, innate delicate situations hard to bring out, or ignorance of their existence on the part of those who testify; 2. the courts are unable to make enforceable moral duties of gratitude or disinterestedness; 3. the law is handicapped in bringing justice to certain infringements of individual interests, such as talebearing or intrigue, which are prevalent in family relationships, because these are too intangible to be reached by legal machinery; 4. important factors in the society of husband and wife, in the phases of their human conduct, cannot be remedied by law, as for example: compelling them to live together, to claim the companionship and affection of each other; 5. the law is a mechanism which does not set itself in motion; it needs human

¹ Roscoe Pound, "The Limits of Effective Legal Action," Report of the Twenty-second Annual Meeting of the Pennsylvania Bar Association, 1916, pp 223-238.

beings to start it into operating action. These are factors which many lose sight of.

Justice expensive in domestic relations cases
Criminal court atmosphere

A weakness in obtaining justice in domestic relations cases, tried in orthodox courts, is shown in the expense involved in both divorce and separation petitions, and in cases of enforcement of support decrees ordered by the judge hearing divorce and separation petitions. The only recourse open to persons of small or limited means is to seek redress in family difficulties through the district courts, this by way of complaints for so-called crimes of assault and battery, desertion, nonsupport. There are some undesirable features connected therewith.

As an English writer has described,¹ the evils are obvious. In the first place cases are tried in a criminal court and all domestic troubles are not criminal; moreover the atmosphere is not suitable for the adjustment of family difficulties. A sensitive wife has to confide to a burly court officer who assents to the complaint at his discretion. Most of the parties cannot afford representation and the question is asked as to how is anyone to ascertain the causes of dissension, and the true facts, with a garrulous wife in the box and a tongue-tied recalcitrant husband below the dock, or vice versa.

1. Carrie Morrison, "Courts of Domestic Relations", The Law Journal, London, 1931.

True facts of marital discord hard to discover in court

The aforementioned author points out that despite the magistrate's devoted care, despite the attention given by probation officers and missionaries to domestic relations cases it is humanly impossible for them to go deep enough, to arrive at facts and causes of the trouble, to deal justly with the case, to give the right decision. She goes on to say:

There are many cases in which the order is unfair to the wife, but there are probably more cases of husbands smarting under the injustice of unfair orders made against them. ...I have not come across any expression of feeling on the husband's side in America, and in all the reports on work done there the husband is regarded as the delinquent, whereas in my personal experience in England, the husband is sometimes the one to suffer the greater hardship in cases of matrimonial trouble.

The writer discloses that efforts to introduce a bill to establish courts of domestic relations in England has already been made, but has been crowded out by pressure of Parliamentary business. It was pointed out that other countries have established some kind of organization or court to deal with the problem, among these, Germany, Holland, Russia, Canada. In England about eighty percent of offenses of children have been ascribed, on investigation, to circumstances of their home; for that reason it has been found a great advantage to deal with families as a unit.

Legal attacks on domestic courts' set-up

In the new procedure applicable to domestic relations courts there is a combination of three distinct acts or functions: 1. investigations; 2. decision; 3, treatment. These

are said to operate under powers of "administrative tribunals." Some criticism has been given to the sound principles of separation of governmental powers, it being argued that extensive legislative, executive and judicial powers are being vested and combined in administrative bodies with reckless and distinct disregard.

Under the new procedure, family courts are not so much concerned by precedent, unless this represents experience.

Decisions of courts are generally not reported, which saves the judgments from being read or criticized by members of the legal profession. In this realm lies a point of attack by those who see in it the absence of checks and balances, which is fundamentally a practical institution of the common law, and which subtracts from the historical struggle against abuses of freedom. The new technique in family courts is likened to the manorial courts of feudalism by those who view with dismay the liberalism of modern jurisprudence.

In pointing out the distinctions between the new and old procedures, the latter are said to rely on the learning of lawyers, while the former to depend more upon psychiatrists and social workers. Justice in the old courts has been based¹ on legal science, in the new on social engineering.

Perhaps some of the legal tenets of a domestic relations court may be questioned by those who fear departure from the accustomed paths. For the benefit of such persons the

1 U. S. Children's Bureau, op. cit., p. 21.

writer quotes what Harold S. Bucklin, Assistant Professor in Social Sciences at Brown University, has said regarding the modern court:

The law does not yet regard the family as the unit in its effort to further social welfare, but the courts in their organization and procedure have begun to deal with the family as the unit, or with the individuals primarily considered as members of it. There is increasing interest in the family court. Is there any danger in this movement? The reasons given for its establishment are:

1. Such a court provides adequately for children of divorced parents and for those who are deserted, both of which classes might otherwise become dependent or delinquent.
2. It makes possible the conservation of family solidarity which is required for the physical and moral integrity of the children. Many inmates of reformatories are from broken homes.
3. It makes possible holding parents responsible for neglecting their children.
4. It makes easier of solution the problem of juvenile delinquency since it places responsibility on the shoulders of the parents.
5. It is more efficient and effective than other courts in its treatment of desertion, non-support.
6. It patches up family difficulties, reconciles husband and wife and solves marital dissensions.
7. It builds family morale.
8. It discovers domestic defects or difficulties which are not now discovered, but which are in reality the cause of much anti-social conduct.
9. To preserve distress and disruption a court must have power to deal with the family as a unit. At present no other court has this power.

1 Harold S. Bucklin, "The Family, the Law and the Courts." National Probation Association Yearbook, 1922, pp. 126-133.

Social check-up on custody of children

Judge Goldstein points to the deficiencies of court orders affecting custody of children without special social service check-up. The granting of custody requires intensive, impartial investigation of the social facts concerning the child, as well as the warring parents; it requires knowledge of where the child should best stay--with the mother or father, foster-parents, or at a particular school. This problem goes beyond the reading of affidavits and the taking of oral testimony.¹

The Honorable L. B. Day, Judge of the Domestic Relations and Juvenile Court, in Omaha, Nebraska, on the topic of custody wrote:

The average equity court hearing these cases does not have before it sufficient evidence upon which to base an intelligent finding in this respect. Most cases are not contested, while usually a formal hearing is required. In spite of statutes against collusion these cases really amount to divorce by mutual consent. The property rights between parties again asserts its influence. The husband and father is required by statutes in most states to pay not only attorney's fees, but court costs, and attorney fees of wife's attorney. In some cases the wife and mother may be so morally depraved she ought not to be entrusted with the care and custody, but in order to keep them and get the decree she refuses to demand contribution to their support and in return consideration he does not contest the case. Thus a bad situation is made worse by lack of sufficient money in a disrupted home.²

This writer points to the fact that the problem of custody continues after the breaking of the home, as there is

1 Jonah J. Goldstein, op. cit., p. 151

2 L. B. Day, "The Development of the Family Court," Annals of Amer. Acad. of Pol. and Soc. Science, 1928, pp.105-111.

no final settlement of the case until the minor has reached majority. Usually the court places the child in custody of one parent with right of visitation by the other. This is a difficult situation to arrange, and in practice calls for frequent intervention of court authority. When one or both parents marry complications increase.

The husband and father uses ways to apply economic pressure regarding support or maintenance in divorce and separation, just as he does in desertion and non-support, in an effort to change conditions to which he objects. He manifests these in failure to pay decrees, as a method of dominating the wife, whom he feels has not treated him fairly. Filled with resentment and bitterness he is determined he is going to make her lot as difficult as possible. Whatever money he does send is done at irregular intervals. This means that the wife must frequently seek redress, or not following the case through the court because of the expense.

Cities the focus for family courts

Cities are the main focus for the newly created juridical systems. Where modern domestic relations courts have been organized, their locations point strongly to urban centers, or county seats. "The family is virtually the sole remaining unit in city dwelling,"¹ because kinship society has been destroyed in our Western civilization. The inherently

¹ Kingsley Davis, "Social and Statistical Analysis," Law and Contemporary Problems, 1944, p. 700.

frail structure of the family is not adequate for the burden it has to carry. The family becomes a concentrated group, relying upon itself alone to share feelings peculiar to blood relationships, when kinship is reduced through living apart.

Family concentration makes for unusual emotional centeredness between parents and children, resulting sometimes in extreme if not stifling intensity. Marriage is centered too much on the subjective factor of romantic love rather than being based on certain objective standards. Marital discord not only affects husband and wife acutely, but also involves the children. It has been observed that parents unconsciously seek consolation, revenge, release, prestige, security, or what not in the children as compensation for marital unhappiness. The latter are victims of divided loyalty, emotional insecurity and parental interference. Emotional intensity in modern society complicates divorce itself because in the immediate family if things go wrong they go very wrong. There are harder emotional readjustments of parents and children after divorce. However, experts are of the opinion that chronic discord is worse for children than divorce.

Changes in city life, which has been the source of individualism, have made for restlessness. Work, which has been revolutionized from the handicraft stage of industrial production to the factory stage, is monotonous. Labor hours have been shortened. People seek highly stimulating activity

to compensate for their dull hours on the job. Romanticism colors many forms of activity. Increased leisure time has given woman more opportunity to dream, read, and to idealize life; she may see that in her life the romantic ideal has not been attainable, or that she has not been given the attention that she desires. She attempts to seek satisfaction in external activities, to realize her ideal either directly or vicariously. Men throw off thought and restraint in seeking temporary pleasures and indulgences. Women are claimed to have swept farthest from her moorings, and that the bars of convention tend to be down.¹

Jurisdiction and features of domestic relations courts

A committee of the National Probation Association recommended establishment of family courts with jurisdiction in the following cases:²

- (a) Desertion and nonsupport cases
- (b) Paternity or bastardy cases
- (c) Juvenile court cases, including the prosecution of adults responsible for delinquency, dependency, neglect
- (d) Adoption and guardianship of children
- (e) Divorce and alimony matters

Features which may be seen in the so-called domestic relations courts are:

- (1) The new techniques called "social engineering," which rely on non-legal sciences--medicine, psychiatry, social work.
- (2) Informal and private hearings
- (3) Case investigations prior to court hearing and following it.

1 Ernest R. Mowrer, Family Disorganization , p.154-165

2 U.S.Childrens Bureau, op. cit., p. 15

(4) Cooperation with social agencies and community leaders.

(5) Emphasis on adjustment of marital discord and domestic situations rather than legalistic formal procedure.

(6) Central record keeping or clearing house.

(7) Supervision and follow-up service till rehabilitation is accomplished or situation improved.

B. Suggestions for Handling Family Situations in Family Courts Interprofessional Approach to Problems of Family

An interprofessional approach to problems of the modern family is recommended by the Committee on Law and the Family, of the National Conference on Family Relations. The resources of medicine, psychiatry, economists and social workers, if expertly employed and interrelated could aid children toward more normal living, despite the immediate domestic catastrophe. The best possible professional skills are required to work out a well integrated program for finding a new and sufficient security for the benefit of bewildered offspring, living with parents who are constantly troubled with marital discord, or who have been separated.

Three questions are asked: 1. What is the law doing about problems of custody and maintenance of children where parents are separated? 2. What are some of the other professions, interested in the general subject, doing about children? 3. What further light on the subject is available from other fields of law?

¹ Kingsley Davis, "Sociological and Statistical Analysis", Law and Contemporary Problems, Vol. X, No. 5, 1944, pp. 834-854.

Family Guidance or Adjustment Bureau

¹
Mary E. McChristie, experienced in domestic relations court work for a period of several years, states than an ideal plan would be to have a well organized probation department functioning as an Adjustment Bureau. Intensive family work could be done, and reconciliations made possible in many instances, the effect of which would be of constructive value in the community. A bureau of this description would emphasize that part of the true functions of a modern court which operates through social service, namely the healing of breaches and the allaying of misunderstandings. Such work has marvelous possibilities for child conservation. Of great importance is trained personnel and adequate staff.

The Adjustment Bureau could be organized apart from the court, but connected thereto. This would prevent the psychological effect of a first appearance in court, with its publicity or undesirable tinge. It would attract worthwhile people whose complex cases might be satisfactorily adjusted by preliminary advice and investigation. Grasping attorneys, interested neighbors, prejudiced relatives, newspaper commentators would not have the opportunity to get the confidences of the client's marital troubles.

Great care is necessary that summoning a spouse to court in itself does not impede reconciliation. There are

¹ Mary E. McChristie, "Report of the Committee on Family Courts," National Probation Association Yearbook, 1925, pp.106-113.

persons who regard subpoenas as the "last straw." Such handling involves special art in the "intake." Contact with the court should be helpful, necessitating watchfulness that it be not harmful.

Friend of the Court

This is another protective method found in the court. It is used in Detroit, Michigan, the "friend" being appointed by the court to protect dependent and minor children, and to compel enforcement of chancery decrees for maintenance, where there are minor children involved in divorce cases, who are liable to become public charges if they are not properly cared¹ for by their custodians.

Public Prosecutor to represent the public interest and the child's interest in divorce proceedings

An authority on social jurisprudence of national and international² repute, writes that the integrity of the family is a problem of major public concern. Legislatures of various countries have taken an attitude that divorce should not be left to the discretion of the judge or parties alone, but that participation in such proceedings should be represented by the public. In Europe and in Latin-American countries a public prosecutor is appointed for this purpose. He makes recommendations to the judge, especially in cases where children are involved. His work is particularly important

¹ Edward Pokorny, "Friend of the Court in Family Cases," National Probation Association Yearbook, 1940, pp. 156-166

² Raphael Lemkin, "Orphans of Living Parents", Law and Contemporary Problems, pp. 834-854

in the post-divorce period, where part of his duty is to enforce maintenance and custody orders. The writer notes that public interest in domestic proceedings seems to be represented in the United States by social workers, whose role does not appear to be clearly defined; that success depends on how much real authority the representative possesses, and whether the judge has to listen to recommendations by fiat of law or as a matter of grace; also whether judges must treat representatives as equals or subordinates. In Europe the public prosecutor is a more important person than social workers in the United States, altho the latter are much better equipped professionally for participation in domestic proceedings.

To improve the child's position in a family crisis some existing institutions need to be strengthened, and some new ones created. This authority beside naming the family court as an effective machinery, includes the following other suggestions: family adviser, conciliation procedures, conciliation council, family jury.

Family Adviser

This is a specially trained person, whose office would be located where family courts exist, who could assist not only during periods of actual and grave crises, but when parties call for advice in marital difficulties. A person who has the role of conciliator, and who carries and enforces maintenance and custody orders. Such adviser would appear in

court, acting as a representative of the public interest, and have duties similar to that of public prosecutor; he would make recommendations to the judge. The judge in turn would make his decision, and if he disagreed, he would give the reasons therefore; a brief would be made outlining the legal consequences of the same. (This description of the family adviser seems to give him not only a social role, but a quasi-legal one).

The plan for family adviser incorporates the selection of a person of the opposite sex for the position of deputy, to give an opportunity for both a man and a woman to hold one of these two offices; there would be in addition a professional staff of doctors, psychiatrists and experts in sex hygiene. Services of local clinics could be utilized where the community could not afford to obtain, or did not have, all the needed professional staff.

Conciliation Procedures

Legislators of various countries, and leading authorities in the field of family relations, strongly urge the need for conciliation in divorce proceedings. France enacted a conciliations law in 1886, it was pointed out, which was incorporated in the Code Napoleon (Article 235, and subsequent articles). It has influenced enactment in various countries and in some states in this country. Under this law, opportunity is given one of the spouses to petition the President of the court to summon the other spouse for conciliation, be-

fore engaging in divorce proceedings. Thereupon a hearing is given in private chambers, no lawyers being admitted. Should conciliation not be effected, a formal document is made up, which authorizes interested parties to file for divorce. There sometimes is another conciliation attempt at a later period of perhaps twenty or thirty days, with postponement of the giving of the formal document till parties have been before the court a second time.

Conciliation Council

The council might be a combination of permanent members, including social worker, psychiatrist and lawyer, with the suggestion that the family adviser be the chairman (that is a combination of office of the family adviser and a specially created council); in addition there might be invited members, either the family doctor, the clergy, or friends of the family in question. The choice of family friends might be made because of their intimate knowledge of the family, or their ability to exercise influence in the reconciliation. Not all cases would require the council; the adviser might be sufficient in certain instances to carry on a heart-to-heart talk with the parties. The procedure would be flexible, as well as informal. The family adviser would issue a certificate to the parties, where conciliation was not effected, stating such fact, which would then permit the filing of the divorce petition. This method would involve a "cooling off" or waiting period of from three to six months; the interim period could

be an opportunity for further steps toward reconciliation. Neither the family adviser nor the conciliation council should be subordinate to the judge.

Family Jury

The jury should be composed of specialists, or persons familiar with, and sympathetic to, problems of the particular persons before them; individuals having a special knowledge and understanding of children's needs. The jury's duty would be assisting in decisions as to custody and maintenance, aiming more at "protective" than "distributive" justice. The present protective function of justice is weak in that it does not go far enough in the area the child most needs, when he suffers both the loss of parent and supporter.

Here again might appear professionals or competent persons in the framework of the jury--a social worker, specialists in family and children problems, the jury being limited to about five members. A doctor, psychiatrist, teacher and two lay persons having experience in family life, such as a respectable father and mother in the community might be chosen. England and Poland have used technical advisers to judges, as well as several other European countries. In certain cases lay judges are employed; the latter have made practical contributions, and have proven very useful in helping the judge understand complex, technical matters, and in introducing new ideas in decisions of the court.

A family jury would give a more realistic and scienti-

fic approach to family problems, enriching the court proceedings, and safeguarding the interests of the child and the social unit.

Lawyers in new interprofessional movement

It should be obligatory for lawyers handling divorce cases to file a report as to his role, his endeavors, and what he has been able to accomplish by way of reconciliation.

C. History of Domestic Relations Courts

Domestic relations courts have developed as a natural expansion of juvenile courts. The social maladjustment of certain children attracted attention to a need for a socialized court. In hearings of minors, it was often the parents who should be before the court in order that a proper and complete program could be worked out for the child. Social investigation disclosed that the delinquent child in reality was often and frequently either dependent or neglected, strongly revealing that the emphasis should be placed on parental responsibility. Extensions of the juvenile court, to include the family, are seen in the passage of statutes giving the court jurisdiction over cases where a delinquent child is involved with an adult.

The first juvenile court was established in 1899,¹ in Chicago, Illinois. Denver, Colorado, followed shortly thereafter (1903), but they already had in use chancery

¹ Genevieve Gabrower, "Juvenile and Domestic Relations Courts," Social Year Book, 1945, pp. 224-229.

methods of procedure, in which hearings were as informal as possible. In Denver, Colorado, in this embryonic period, Judge Ben Lindsey, who was then Police Justice, introduced a special sessions in his court for the hearing of children's cases.¹ But before the establishment of juvenile courts, certain features of these were used in some parts of Canada, Maine and New York. Juvenile courts in many states were given funds to administer for the benefit of dependent children--this was commonly done under the title of "Mother's Pension Fund." The purpose of the later was to keep children in their own home with parents as their natural guardians, who unless financial aid were given, would be prevented by poverty from so caring for them.

Social investigations are part of the history of juvenile courts. The establishment of such practice marked the first entry of jurisprudence into the field of scientific inquiry, to determine why the individual case had come to its attention. Probation officers were appointed. Their duty was that of investigation, including the supervision of probation (this last instrumentality being a most important and effective method of correcting delinquency). Probation officers were assigned to aid and look after the rights of the minors, representing the juvenile at court hearings and furnishing the court with necessary factual material which

1 "Twenty-Five Years of the Juvenile and Family Court of Denver, Colorado," Presented by Friends of the Denver Juvenile and Family Court, pp 1 - 25.

was written into their case history. Social and legal records were put into operation so that a study might be made of the causes of wrongdoing. Physical and mental examinations were also an innovation. The court had substantial knowledge about the defendant before the bar upon which to base its judgment and to assess human responsibility.

Legislation of juvenile courts originated from two sources--the English common law, and the chancery or ecclesiastical courts. Common law is the result of entrenched custom, its crystallization wrapped up through centuries and ages. It is rigid, slow moving, resistant to change. In the early days people sought redress from the king when common law would not yield to the influence of social needs or modification. The king could do no wrong, so his acts of review were accepted; when an appeal was made to him, he gave relief in the special case because of its merit, but without derogating from the common law. Because it was not possible for him to listen to the many who sought his aid, the king turned over to his spiritual counselor, the Bishop, his sovereign prerogatives; thus the church became the guide of men's good conscience; thus sprang into being the Ecclesiastical Court.¹ In mediaeval times families sought relief through this court, the church being their common denominator; in these sat representatives of existing professionals, performing in such manner as is suggested in a modern court jury clinic, or conciliation

¹ Encyclopedia of Soc. Sciences, 1934, "Professions," p.476

board, who arrived, in conference, at decisions.

The doctrine of "parens patriae" originated from the Ecclesiastical Court. Under the said doctrine the child has been considered the ward of the State. This is the basis of the court's function of today as it relates to the protection of the child. A good measuring rod of how each State safeguards children, who are the raw material of government's perpetuity, is the way the child is protected, whether by legislation or administrative practice of the court.

An interesting historical development in the early days of unfolding liberalism was the rise of the individual as a social force. With the loosening of restraint came the making of the person's own definitions for situations, the growth of self-determination, or the so-called emancipation. The elevation of the individual came during the days of the Renaissance, in the sixteenth century. "It is in the Reformation that we have to look for the beginning of individualism and for the roots of the disorganization of the family of today."¹ Laws reflecting laxity regarding the sacredness of the marriage bond have been reflected in certain European states and in the codes of New England.

2

Massachusetts was the first to legislate in 1869 an act requiring the presence of a visiting agent of the State Department of Charities at hearings before a child was committed to a

1 Ernest R. Mowrer, Family Disorganization, p.148

2 Genevieve Gabrower, op. cit., pp. 224-229

reformatory. Other laws followed with special provisions for juveniles and the establishment of a probation system in 1878. Due credit for the movement should be given to the Society for the Prevention of Cruelty to Children, organized in 1874 in New York City, and April 23, 1878 in Massachusetts.¹

The steady movement of the juvenile court has gone forward so that today the system is enacted in forty-seven States, Wyoming being the excepted one.² These exist in the form of separately created courts or those having specialized jurisdiction and procedures. Extensions have been made in the power of many of the juvenile courts to bring in the parent for contributing to the delinquency, dependency or neglect of the minor child. There is a further broadening of jurisdiction in certain juvenile courts to include the hearing of cases of desertion or non-support, as these show a failure in family function, reflecting on the welfare of the juvenile.

Domestic courts have provided escape from technicalities of criminal courts, the giving of bond, trial by jury, and other criminal procedure. Such courts have been developed to replace or aid probate courts, which have no social service investigation facilities, or services to enforce decrees in behalf of needy mothers without attorneys. "If the potentialities of juvenile courts had been better appreciated in the

¹ Massachusetts Society for the Prevention of Cruelty to Children Handbook, p. 14

² Genevieve Gabrower, op. cit., pp. 224-229

beginning they would have had jurisdiction which later was¹
given to family courts in some communities.

The first family court might be said to that in Buffalo, which was established in 1910. It was in the form of a domestic relations division, which had jurisdiction over criminal business relating to domestic affairs, including illegitimacy cases. But the pioneer family court is considered to be the one in Hamilton County (Cincinnati), Ohio, which was established in 1914. It was the first to bring within its orbit divorce cases. This court is the most radical departure from the old system of strict jurisprudence, it being a social court; technical rules of procedure are abolished; discretion is coupled with the law; it is an informal court. Judge Charles W. Hoffman, a leader in the movement presided over this family court. It was he who headed a committee on domestic relations courts, in 1916, appointed by the National Probation Association, to make a study on this newly formulated judicial procedure. The evolution of the Ohio type of social court is interesting, but its history is not isolated. It represents the result of repeated agitation for a more human and efficacious court of social jurisprudence²
which would handle all family problems.

Juvenile and family courts were invented or concate-

1 Walter B. Beckham, "One Court for Family Problems," National Probation Association Yearbook, 1942, pp. 80-83.

2 James H. Ricks, "Evolution of the Family Court," National Probation Association Yearbook, 1924, pp. 19-25

nated from legal spare parts to get needed social functions performed. Though principles of jurisprudence may be traced far back in history, domestic relations courts should be looked upon as a growth in legal theory and not a departure therefrom. The development of family courts represents increased community consciousness that these cases are a public responsibility. Their establishment is thought to be chiefly due to public opinion, to socially minded judges and to court personnel efforts. In defending their desirability, these leaders reconcile their basis for existence, procedure, and legal right to historical legal dogma.¹

Juvenile courts operate under different legal systems in the various states. Since their initiation their methods have been tested throughout the years of experience, and the main principles of technique have been standardized.

Domestic relations courts have been functioning in some form or other in the following states: New York, since 1910. A modernized court system has existed in New York City since 1933. The courts in Chicago, Illinois, and Philadelphia, Pennsylvania, have enjoyed excellent reputations; the former coming into existence in 1911, the latter in 1914. A provision was made for domestic relations courts throughout the state of New Jersey in 1921. During that same year courts were established in Nebraska, Missouri, West Virginia and

¹ John J. Kenney, "The Juvenile Court: Pioneer in Social Jurisprudence," Marquette Law Review, Volume 16, 1931-32 pp.184-187.

Colorado, whose juvenile court practices were made nationally famous under Judge Ben Lindsey, in the city of Denver, had broad extensions into the domestic relations field before 1924. Virginia enacted legislation in 1922, and Alabama in 1933. Rhode Island established a family court in 1935 (this state, together with Wisconsin and the city of New York are noted for their conciliation proceedings). In 1939, California initiated a Children's Court of Conciliation, headed by Judge Ben Lindsey, in Los Angeles. South Carolina established a domestic relations court in 1936. Oklahoma passed a law in 1925 for the establishment of a domestic relations court, but it was not put into effect. The family courts in Ohio followed on a county system basis; the first to start was that in Hamilton County, in 1914; five other counties followed soon thereafter: Montgomery County (county seat, Dayton) in 1917; Mahoning County (Youngstown), in 1918; Summit County (Akron), 1919; Lucas County (Toledo), 1924; Stark County (Canton), 1929.¹

¹ The Book of the States, 1945-1946, The Council of State Governments (Chicago), pp. 346-347

CHAPTER IV

LEGAL AND SOCIAL ASPECTS

A. Legal Aspects

What is Law?

Blackstone defined law, the oldest profession, as a "rule of action, prescribed by the highest authority of the state, commanding that which is right and prohibiting that which is wrong."

Purpose of the Law

The purpose of the law is to secure the highest well-being of society.¹

Professor Herbert H. Lou, in his book "Juvenile Courts in the United States" pointed out that:

Law is a living social institution and there is no reason why it should not keep pace with progress of the modern social sciences and incorporate and utilize the ideas, methods and the morals developed therein. It would seem strange if our criminal law, our law courts in court procedure were still clinging to the mediaeval sentiments of vengeance despite the tremendous advances that have been made in these sciences. With the advent of the sociological school of jurisprudence of the present century, which advocates the unification of all social sciences, of which law is but one, law is no longer regarded as a self-centered, self-sufficing science, isolated from the other social sciences. We are realizing more and more that law should be conceived as a means toward a social end. This new conception of law compels us to take account of social causes and social effects in relation to social conditions and social progress. This is sometimes called social justice.

1 John S. Bradway, Law and Social Work, pp.15-18.

Henry James Sumner Maine (1822-1888) and John Austin (1790-1859) regarded law from the standpoint of history or logical analysis. That is decisions were based on precedent and logic.

1

The late Justice Oliver Wendell Holmes, of the U. S. Supreme Court, stated that the point of view of both the bench and the bar was too narrow. He wrote as follows:

I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage. The duty is inevitable, and the result of the often judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate and often unconscious... When socialism first began to be talked about, the comfortable classes of the community were a good deal frightened. I suspect that this fear has influenced judicial action both here and in England, yet it is certain that it is not a conscious factor in the decisions to which I refer. I think that something similar has led people who no longer hope to control the legislatures to look to the courts as expounders of the constitutions and that in some courts new principles have been discovered outside the bodies of those instruments, which may be generalized into acceptance of the economic doctrines which prevailed about fifty years ago and a wholesale prohibition of what a tribunal of lawyers does not think about right. I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantage on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident and see that really they were taking sides upon debatable and often burning questions.

2

Justice Benjamin Cardozo, of the Supreme Court of the United States, commented that:

Our philosophy will tell us the proper function of law in telling us the ends that law should endeavor to at-

1 Oliver Wendell Holmes, "The Path of the Law", Harvard Law Review, Volume 10, No. 8, March 25, 1897, pp. 467-468

2 Benjamin Nathan Cardozo, "The Growth of the Law," Yale University Press, New Haven, 1924, p. 112.

tain; but closely related to such a study is the inquiry whether law as it has developed in this subject or in that, does in truth fulfill its function--is functioning well or ill. The latter inquiry is perhaps a branch of social science calling for a survey of social facts rather than a branch of philosophy itself, yet the two subjects converge, and one will seldom be fruitful unless supplemented by the other. Consequences can not alter statutes but may help to fix their meaning. We test the rule by its results.

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Dean Emeritus Roscoe Pound, of Harvard Law School, described the purpose of sociological jurisprudence in these words:

The main problem to which sociological jurists are addressing themselves today is to enable and to compel lawmaking, and also interpretation and application of legal rules, to take more account, and more intelligent account, of the social facts upon which law must proceed and to which it is to be applied.

Legal Inflexibility - Changing Legal Procedure

It is a maxim of legal history that substantive law is easier to change than to change legal procedure. Changes in procedure, however radical and far reaching, are changes only in the way legal principles are administered, as procedural rights have been jealously guarded from the first. It is remarkable, in view of this conservatism, how speedy has been the adoption of procedure involved in the establishment of juvenile courts.²

Court Proceedings in Juvenile and Domestic Relations Courts

Court procedure, from a legal point of view, follows

1 Roscoe Pound, "Scope and Purpose of Sociological Jurisprudence," Harvard Law Review, Vol.25, No.6, April, 1912, pp. 512

2 Edison R. Sunderland, "The English Struggle for Procedural Reform," Harvard Law Review, Vol.39, No. 6, April, 1926, pp. 725-748.

statutory provisions, but from an administrative point of view gets its authority from interpretative power. The latter may be done by adherence to historical practices, as illustrated in the use of the doctrine of "parens patriae," originally vested in the old ecclesiastical or equity courts. The judge may exercise principles which are parental in nature; in doing so he is unhampered by tradition and precedent. The methods of ascertaining facts in this instance are different from ordinary forms of procedure, which rely on evidence given in the testimony of plaintiff and defendant. He may secure facts in the same manner as if making an inquiry in a commercial enterprise, through organized trained experts, who go out to make an investigation.¹

Before courts were socialized the law was more concerned with an individual, but this interest in an individual was confined solely to his act of transgression. The question for court determination was whether at a time and place named in the complaint the party did or did not commit one of the specified acts. The modern court, however, under administrative powers is not limited to trial of bare issues, nor to events which evidence brings out through examination of witnesses. In domestic relations courts judicial findings may be arrived at after three processes: 1. investigation before hearing; 2. during hearing; 3. supervision and treatment following hearing.

1 John J. Kenney, op. cit., 184-187

Aspects in the Field of Law

There are two aspects to be thought of: 1. political; 2. legal. The former is where there is a public interest or agitation, but the idea has not advanced beyond controversial stages to legislative enactment; the latter is where it has been accepted and made a statute. Our modern government is a blend of both political thinking and legal factor. It is practised through administration which compromises between the two extremes. The greatest problem is to determine the part beyond which the law is too rigid and restrictive for efficiency, and our daily life. Legislation means nothing if the spirit of the law is not carried out.¹

Function of the Law

This is classified under two headings: 1. Substantive law, which declares rights and duties; 2. Administrative law, which prescribes methods of protecting rights and duties declared.

Attacks on the constitutionality of juvenile and domestic relations courts have been made alleging they were not abiding by the doctrines of supremacy of the law, and the separation of powers.

Supremacy of the Law

Nothing was more glorious in legal history than the judges of England telling the king that he ruled "sub Deo et lege."

1 John S. Bradway, Law and Social Work, pp. 15-18

It has been our aim that government be one of laws and not of man, that is removed so far as is possible from the whim of man.

Judge J. H. Lamneck, of Ohio, said that a person comes under the law of domestic relations at birth, but that families existed before nations--in fact became united for their common defense and thus formed what we call government and law; thus the law of the family is older than any other law, and its supremacy shall not be overlooked. The general obligations of parent and child continue through life; marriage establishes new family relations; thus the law of the family is independent of the individual and must be given separate consideration.

Separation of Powers, Legislative, Executive, Judicial

This doctrine and that of Supremacy of the Law were found in the seventeenth century English law books, and were put at the foundation of our constitution by American lawyers. At the time of their origin,¹ England was engaged in a contest with Stuart kings to maintain the supremacy of the law. Around 1880 there began to be a demand for social legislation and for the adjustment of law to the exigencies of such legislation. Lawyers have usually raised questions in court as to separation of powers, whenever judicial authority to administrative

¹ Roscoe Pound, "The Juvenile Court and the Law", National Probation Association Yearbook, 1944, p. 1.

agencies or vice versa have occurred. They see in such usage a threat to limitations which experience had shown to be necessary.

Equity Characteristics in Domestic Relations Courts

Characteristics of domestic relations courts originally found in the chancery courts of England are:

1. Informality.
2. Remedy, not punishment.
3. Prevention of wrongdoing in advance of its commission.
4. Employment of administrative rather than adversary methods.
5. Adaptation of its action to the circumstances of individuality, such action being demanded by justice if not always by security.

The flexibility of equity procedure--its ability to deal with a number of parties who have conflicting or overlapping interests in one proceeding--and its power of molding relief to the facts of the case, is decisive. The modern court of equity has made possible a combination of judicial with administrative features, and keeping to the best of these in practice.

Marriage Status in Law versus Religious Aspect

Marriage is regarded as a contract which can be dissolved by the State under certain specific statutory grounds. However, the concept of the Roman Catholic Church is that marriage is a sacrament and in strict official dogma cannot be

1 Roscoe Pound, "The Juvenile Court and the Law", p.1

dissolved except by death of one of the spouses. Separation from bed and board is admitted where warranted by some types of domestic discord. The influence of the conception has caused legislation in non-Catholic countries, where divorce is permissible, to formulate issues on the basis of guilt, wrongdoing. Divorce is awarded to the legally innocent party. There is no distinct definite national theory of marriage, represented by law, whether it be minimum age, qualifications, or other factors. Law, without a doubt, cannot control and regulate customs of people regarding marriage. It is more likely that marriage customs of the people will eventually be reflected by the law.

Procedures Used in Progressive Modern Courts

Significant features of the new domestic relations courts is the possibility of considering social evidence as distinguished from the legal. Technical rules of procedure are abolished, efforts being made to probe into social factors and conditions, to give the court an opportunity to get nearer the truth, which was lacking in conventional procedure. The modern tribunal has the resources of professionally staffed personnel and the cooperation of private agencies for fact findings and analysis. Family problems often involve seeking the court for legal remedies, but if the decision is merely legalistic it may work a grave injustice, whether it be in the realm of divorce, separation, custody of children or whatnot.

Equality of the Law

Legal machinery should be simplified that poor persons might be able to gain relief from undesirable marital ties in the social atmosphere of a domestic relations court. Divorce and legal separation in Massachusetts are probate court proceeding matters; these require expense of litigation--lawyers fees and court fees. Because of costs, people of small means tend to seek help through the district court; their cases are heard as a result of criminal complaints, and the criminal court atmosphere is not a suitable one.

Legal aid societies are valuable agencies for assisting persons who need the services of an attorney, and who cannot afford to pay the full fee or some part of it. But the resource is not used by many because they dislike charity, or for other reasons such as: wishing to choose their own counselor; traveling expense and loss of time in interviewing agency representative; difficulty in making themselves understood, if of foreign extraction, and having a language barrier.

Divorce Considerations

The legal aspects are confined to whether or not the libellee committed acts constituting grounds for a decree. The court is not concerned with collateral material, explanations, extenuating circumstances which might bring out underlying facts. Although divorce is granted on strictly legalistic proceedings, it is primarily a social problem, and only secondarily a legal one. With the increasing numbers of persons

being granted divorce, we can scarcely realize the significance and extent of this social phenomena. No other breakdown is attended with so much pathos, tragedy, and with the aftermath of revenge, hostility and other qualities.

Custody of Children

The court is confronted with two major demands: 1. the interests of the children; 2. the claims of the parents. These are decided according to statutory provision as well as the judge's individual discretion.

Maintenance

The judge is empowered to make findings according to a determination and evaluation of certain factors--the parent's capacity to pay--the reasonable living expenses of the family--its social and economic status. It must be a sum which has a fair chance of being paid.

Fulfillment of Maintenance Orders

Violations of court orders for maintenance and support are treated as contempt in civil proceedings, and misdemeanors in criminal proceedings. Punishment and arrest is a principle, but the policy is more lenient in numerous instances than the public suspect. Courts treat violations which are within their immediate jurisdiction, if the case is being pressed by the libellant or complainant; but courts do not make a practice of close check-up of deserters and non-supporters who have gone beyond their jurisdiction. It is too expensive and time consuming.

B. Social Aspects

Social work, contrasted to law, is a new profession. Its province is the seeking of reasons for socially unacceptable behavior. It attempts to analyze causes which lead an individual to live in a manner harmful to himself and detrimental to the community, and to correct these by work with the individual or change in his environment. The person is seen as a whole in relation to a total picture, instead of limiting the viewpoint to water-tight compartments of theory of each science, legal, medicine, economics. The social worker approaches the adjustment of the family disorganization in a friendly, sympathetic, intelligent manner to soften the effect of a broken home, which may be irreparably ruptured. She may have to interpret differences that gulf the old-fashioned parent and the new-fashioned child, or differences in cultures, attitudes, philosophy, personality existing in family relationships. In her attempt to ameliorate domestic conditions, or to rehabilitate the home, she may have to use the court as a means to an end.

The mechanisms of law are different than those of social work; law can compel an individual to do certain things, whether he wishes or not, whereas in social work and in other fields one persuades, argues, gives advice or suggests solutions; in law decisions are final, not often tentative; law is reduced to issues; it is rigid, whereas in social work there is

essentially flexibility.¹

There are handicaps to case work in a legal setting:

1. fear on the part of both worker and client as to the rigidity of the law, which is detrimental to the client-worker relationship; 2. the social worker is confronted with a difficult social situation--the problem requires the assistance of interprofessionals; 3. there are complicated techniques and approaches; 4. she is faced with other problems, such as political interference, time element--that is her case load does not permit her doing as thorough a job as the situation merits. Fundamental human relationships have collapsed in the family or are approaching rupture. There is hatred, disloyalty, between husband and wife and between parent and child; there are emotional disturbances and attitudes which are both the cause and effect of the lack of harmony. The question with the worker often is how is she to produce evidence in court, even though she sees indications of factual material which go to make up neglect or whatnot. Hers is a task of practicing art in case work, within the limitations of a legal setting.²

Social workers have had difficulties in reconciling social justice with judicial barriers. It at first seemed to them that the law had been resistive in relaxing limitations which were necessary for effective attainment of social objectives. Pressure of social work organizations has been of

1 John S. Bradway, Law and Social Work, p. 21

2 E. Marguerite Gane, "Case Work in a Protective Agency," National Probation Association Yearbook, 1937, pp. 203-216.

prime importance in developing changes in law and procedure to meet their aims. There has not been a cooperative relationship between the profession of law and social work, each represents one side, each is watchful of the other.

A gap exists between social work and the law. It has¹ been commented that social workers have sought to bring their ideas to the field of law without adequately considering the importance of court procedure or legal consequences, with a resulting clash. Social workers point out that law is antiquated, resistive of change, that it ignores modern problems; that administrators of the law are mostly not socially minded; law is rigid, arbitrary, having artificial rules; it creates red tape instead of solving situations.

Lawyers on the other hand allege that social workers are too gullible, believing too much of their clients, too suspicious of the other side; they have not sufficient evidence in their material, and cling to this despite proof strongly to the contrary; they claim social workers are unaware, forgetful or ignorant of the personal rights involved, which courts must recognize. Lawyers affirm that social workers are influenced by ideals more than practical considerations; that social workers are not zealous in guarding confidences.²

1 John S. Bradway, op. cit., p. 21

2. Otto G. Wisner, "A Lawyer Looks at Social Workers," Survey, February 25, 1925, p. 585.

Attorneys are personally not unfriendly, although in professional practice they may concertedly protest against some socialized approaches in the handling of family court work. This may be the so-called hearsay evidence--reports from social organizations, juvenile court records, neighbor's statements made to social investigator. The aforesaid bring criticism, facetious comments and derision. They often raise the old familiar cry about violation of constitutional rights. However, many lawyers with fuller understanding have taken a different attitude, and have in fact become quite cooperative, and interested in obtaining a solution.¹

Probation officers, who are part of the court staff, are the social workers. They are considered the heart of their legal setting, for it is through their zealous interest that the case is handled from its initial stage to its finality. Their skills are involved in good intake, investigations, formulative plan of treatment, supervision. Their success is dependent on whether the court knows how to use their services as well as those of other professionals, the doctor, psychiatrist and psychologist. Failure has sometimes been attributed to the work of probation, when in truth it has not been given a fair chance. Cases have been placed on probation which were not proper subjects, such as inveterate drunkards and narcotic users. "The relationship between the judge and the probation

¹ Mary E. McChristie, "Report of the Committee on Family Courts," National Probation Association Yearbook, 1925, pp. 106-118.

officer is very often like that of the devout Hindu to his Buddha."¹ Probation officers have to receive orders which they inwardly question, but leave the court to carry them out as best they can. Sending out children who have been on probation because of delinquency up to their sixteenth year without guidance till they are twenty-one is not reasonable. Although the delinquent children have had help and training, this does not always have a lasting effect; they must continue to be exercised in character building, just as one does to keep physically fit. Spiritual and ethical daily dozens are necessary in training to keep socially fit; these should not be permitted to lapse between sixteen and twenty-one.²

1 Jonah J. Goldstein, The Family in Court, p. 17

2 Ibid., pp. 125-126

PART II

CHAPTER V

THE TWENTY-TWO STATES STUDIED

In checking over the laws of the several States in the Union, the writer found certain aspects in twenty-two States, pointing toward some form of domestic relations courts. An endeavor will be made to show herein how these courts were established, to describe the type of court, its jurisdiction, to indicate extent of coverage, and give particulars about personnel factors. It will be observed that courts have been created under two sets of circumstances--by special legislation or by administrative ruling. Wherever possible there will be quoted the most recent legislation of the General Laws or of the General Code in the hope of indicating the present status. Laws themselves, however, are not a criteria upon which to gage the practice in a specific community. The passing of statutes does not measure the extent of usage, just as the failure to pass laws is not a test of lack of action or disinterest.

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Alabama

Establishment: in each and all counties having a population of 200,000 people or more.

Type of court: Juvenile and Domestic Relations Court

Jurisdiction: Exclusive and original in all actions, proceedings or causes involving disposition, custody, control of, protection of delinquent, dependent and neglected children;

1 General Acts of Alabama, 1935, sections 1-24.

prosecuting and punishing persons charged with offences of abandonment or failure to support their wife or their child; violation of laws for the education of children; regulating child labor; persons charged with contributing to the dependency, neglect of delinquents--that is any male child under 16, any female under 18; prosecution for assault and battery by husband or wife on the other spouse or on child by parents.

Personnel: Judge appointed for term of four years by judges of the Circuit Court, the latter in turn are appointed by the governor. The judge is given jurisdiction, power and authority of Circuit and Chancery Courts. He is paid a salary of \$4200. The solicitor has the direction of the probation officers, although the chief probation officer is appointed by the judge to serve at his pleasure; other probation officers and employees are appointed as needed in the judgment of county commissioners or other governing body. Selection of probation officers is on the basis of special fitness, training, education and experience.

Extent of coverage: A section provides for the creation and the establishment of an Advisory Board, consisting of citizens of the community and known for their interest in the conservation and protection of dependent, neglected and delinquent children and the preservation of the home and family life. Such shall serve during the term of the judge of said court. Their duty is to bring to the attention of the judge any inefficiency or dereliction of duty on the part of any officer or employee of the court, or home or school; to study the work of the court and other similar courts and from time to time recommend to the judge such measures as in their opinion would further the intent and purpose of the Act; to inform the public from time to time of the problems sought to be met by the Act by reports of such work of said courts and through such means as the Board shall deem wise; their duty is to see that courts shall have adequate and efficient staff for the proper functioning of the same. The Board is to consist of nine members, five of whom shall constitute a quorum.

Another section provides that the Act shall be considered remedial in nature and liberally construed that it may accomplish the beneficent purposes intended thereby.

Alabama previously had legislated the establishment of a domestic relations court in Jefferson Court (county seat in Birmingham), in 1923. It also established in 1927 a domestic relations court in Montgomery Court (county seat, Montgomery). 1

1 General Acts of Alabama, 1923, p. 612
 " " " " 1927, p. 238

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California

Establishment: in each Superior Court in counties having a population of 900,00 or more.

Type of court: Children's Court of Conciliation

Jurisdiction: Whenever any controversy exists between spouses which may result in the dissolution or annulment of marriage or in the disruption of the household, and there is a minor child of the spouses or of either of them whose welfare might be effected thereby, the Children's Court of Reconciliation shall have jurisdiction over the controversy and over the parties concerned therein, including any person having any relation to the controversy. In cases where no minor is involved the court is not obliged to hear cases, but may if it does not seriously impede court work, and may dispose in the same manner as similar cases involving the welfare of children.

Personnel: Appointment by majority vote of the judges of the Superior Court of the County of a Commissioner who shall be known as the Director of Conciliation and shall receive a salary of \$4200; investigator, salary \$2400.

Extent of coverage: Prior to the filing of the action for divorce, annulment or separate maintenance, either spouse or both spouses may file in the Conciliation Court a petition invoking the jurisdiction of the Court for the purpose of preserving the marriage, by affecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

The hearings shall be informal; there may be a conference or a series of conferences to effect reconciliation or an amicable adjustment or settlement of issues of controversy. To facilitate and promote purpose of the act the court may with the consent of both parties recommend or invoke the aid of a physician, psychiatrist and endocrinologist or other specialist, or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid should not be at the expense of the court or county unless the board of supervisors of the county specially provides and authorizes such aid.

The court at or following the hearing may make such orders in respect to the conduct of the spouses and subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses; but in no event shall such orders be effective

for more than thirty days from the filing of the petition unless the parties mutually consent to the continuation of such time. A thirty day moratorium is provided before spouses can file for divorce should there be no reconciliation.

Statistical Factors, Special Comments

Judge Ben Lindsey, famous originator of Denver's Juvenile Court, and who served in the Los Angeles bench since 1935, was made the judge of this newly created court. In 1939, Los Angeles County had 12,382 persons asking for divorce, which meant that the homes of 17,500 children were being threatened because of these actions. In his first nine months, sitting only half time because of his other duties as Judge of the Psychopathic Court, he handled slightly over 1,000 recorded cases. In 400 reconciliations occurred and the families resumed normal home living affecting the lives of 900 children. Another 400 agreed to settle their differences in private; they were granted interlocutory decrees with one year to work out reconciliation before the decree was made final. The balance of 200 insisted on fighting before the court. This was not the whole story: scores of wives unknown to their husbands talked over their marital problems, as did husbands; they called the judge at home or at night sometimes in order to avoid publicity. It was estimated that the saving in legal fees in the county alone amounted to three million dollars a year. Attorneys were at first bitterly opposed to the court because the cases were settled too quickly to justify the customary fees, also because the judge fixed the fees at \$50. instead of \$500. Some lawyers however became enthusiastic because the system saved them as well as the clients much time, and settlements were better. The taxpayers benefitted. The court can handle as many cases as four formal trial courts, saving the costs of at least one hundred thousand a year. However, the saving of money was nothing compared to the savings in terms of humanity. ¹

Colorado 2

Establishment: No specific mention, except coordinating with district and county courts in jurisdiction of any criminal case with family. This appears to be a broadened juvenile court.

Type of court: Family court

Jursidiction: exclusive jurisdiction in all cases concerning

¹ "A Court to Prevent Divorce," New Republic, August 19, 1940, pp 239-240.

² Colorado, G.L., 1941, Ch. 45, s. 200

neglected, dependent, or delinquent children or persons who cause or contribute thereto, and in all cases concerning adoption, custody or disposition of children, and the care and protection of their persons from neglect, cruelty, abuse, and proceedings concerning feeble-minded.

Coordinated jurisdiction with district and county courts in any criminal case with the family court in cases involving persons under the age of 21, or any adult where offense is against persons under the age of 21.

Evaluation

The Denver court, presided over by Judge Ben Lindsey from 1900 to 1927, broadly interpreted its powers. Under him many practices were put into operation for the first time relating to children's cases. His court is reputed to be the first to have a satisfactory system of hearing every aspect of children's cases before the same tribunal, being at the same time a juvenile as well as a family or domestic relations court. Divorce cases and other cases over children were heard in the same court, although no express wording was shown in legislative enactments. It was said of this court that Judge Lindsey contributed mostly to its work because of his personality, his understanding of human beings, and understanding of the proper approach and attitude towards defendants, especially toward children. More than half of these young folks came to court on their own volition. Judge Lindsey is described as handling cases with the most notable human artistry; he was most tolerant to "sinners" of certain types (referring to the "fallen girl"). For the first time in history people morally sick came alone to his court as they would go to a doctor's office when physically ill. The judge placed personal responsibility on people for going to prison themselves. They went to prisons and institutions alone--this was done in over a thousand cases without loss of a single prisoner. Only six ran away; they came back and then went alone. Much unofficial court work was done under Judge Lindsey's administration; when a new judge was elected in 1927, he interpreted the court somewhat less broadly. There is no indication that the court of today goes beyond the scope defined in its legislation.¹

2

Florida

Establishment: for the protection of home, family and child life, the preservation of domestic relations, the prevention

1 "Twenty-five Years of the Juvenile and Family Court of Denver, Colorado," Presented by Friends of the Denver Juvenile and Family Court, pp. 1-25.

2 Florida, Special Acts of 1939, Ch. 19597

of juvenile delinquency and dependency and for enforcing performance of legal duties in connection therewith; in communities over 180,000.

Type of court: Juvenile and Domestic Relations Court

Jurisdiction: Concurrent jurisdiction with any and all other courts of the state over the violation of any statute or failure of one member to discharge any legal duty owed to another directly and reasonably involving the moral or physical welfare of any child, and particularly laws relating to non-support, withholding support, school attendance, child labor, cruel treatment of children, offenses against the person and against decency and morality when directly involving any child or when contributing to the delinquency and dependency of any child; concerning investigations to determine the paternity of any child alleged to have been born out of wedlock.

Personnel: Probation officers are required to have a college education or its equivalent in training, and shall have actual experience in social welfare and in dealing with child and family life; they are selected by the judge and at his pleasure hold office.

Extent of coverage: A section provides for conciliation and adjustment: "In order to promote family and home life...the judge is hereby clothed with authority and jurisdiction insofar as the performance of other duties may permit to counsel and advise with the members of any family where complaint may be made of any misconduct..."

All rules of evidence and usual requirements of due process of law and fair trial shall be regularly observed as in any other court, as well as the hearing and disposing of any special criminal charge.

1

Illinois

Establishment: Unique court organized April 3, 1911, by a resolution adopted by the judges of the Municipal Court. Under an act of the legislature creating this court the judges were given power to establish branch courts and to prescribe the procedure for them.

Type of court: Court of Domestic Relations

Jurisdiction: over cases involving wife and child desertion, contributing to dependency and delinquency, violations of child labor laws and laws forbidding women to work for more than ten hours, actions for selling liquor to minors,

¹ U. S. Children's Bureau, "The Child, the Family and the Court", Publication No. 193, 1937, p. 67

1

Iowa

Establishment: In Polk County(county seat, Des Moines)

Type of Court: Juvenile Court and Court of Domestic Relations of Polk County

Jurisdiction: District court branch having jurisdiction over children's cases, and over adult cases contributing to the delinquency or dependency of children.

Exclusive probate jurisdiction involving the hearing of divorce cases.

Michigan 2

Establishment: a "friend of the court," in Circuit county courts

Jurisdiction: Right "to enforce payment of all delinquent payments duly ordered and decreed by said court for the support, maintenance and education of dependent and minor children where parents have been divorced, where said dependent minor children for any reason are not receiving proper care, maintenance and education and custodian. "

Personnel: Friend of the court is appointed by the prosecuting attorney by and with the advice and consent of the circuit judges in each county; the "friend" need not be a duly qualified and licensed attorney, but may be any person competent for such work and may be the same person who is a probation officer or assistant probation officer in such county.

Statistics

In a clinic report compiled by the psychologist of the Psychopathic Clinic, Recorder's Court, Detroit, Michigan,³ in which a study was made of 200 cases, 100 men and their wives, where husband or wife were charged with or convicted of felony or misdemeanors, or in which the domestic situation was an important factor in the crime, some of the following findings are quoted: The group were selected at random during eighteen months' period, and is supposed to be typical of cases found in criminal docket on domestic relations situations. It is the custom of the clinic to examine the mate as well as the defendant in order to understand fully the fundamental factors in the domestic maladjustment.

1 Iowa, Code, 1931, Ch. 179

2 Michigan, Compiled Laws, 1929, S.12783

3 Helen Flinn, "One Hundred Domestic Relations Problems"
Mental Hygiene, October, 1926, pp. 732-742

In every pair there were found psychopathic deviation; the wives, although the husband was the defendant, presented nearly as much mental deviation from average as the husband. Frequency of alcohol in men amounted to 48%; inferiority and feeble-mindedness in wives, to 56%; inferior wife extremely frequent in the selection of alcoholic male; poor home management and inferior economic judgment of inferior wife tended to further alcoholism of husband.

Mental ages (Pitner-Patterson tests) range from 6 years 1 month to 17 years, 4 months. The men's range ran from 7 years to 17.3; median for men 11.7; the women ran from 6.1 to 17.4, with median of 10.9. Intelligence quotients: men 43 to 107, median 68.6; women 38 to 110; median 62.8.

The technical charges before the court were: non-support, 36 cases; disturbing the peace, 37 cases; assault and battery, 20; drunkenness, 6; indecent exposure, 1.

It was also stated in the clinic finding that the legal charge and the legal provisions fall far short of bringing about harmony in the home and solving the domestic problem; that every domestic relations case presented at court warrants as full and complete an investigation of the wife as of the husband; that when this is done most every problem will show complexity requiring long and careful therapy; that the difficulty cannot be settled by the administration of a fine or a short term of imprisonment.

1

Missouri

Establishment: Judges of the circuit court of the city of St. Louis, comprising the 8th Judicial District, shall set apart two divisions of said court, Division No. 1 and Division No. 2 of the court of domestic relations.

Type of court: Domestic Relations Court

Jurisdiction: Assignment for hearing and trial of all actions to above referred divisions for divorce, separate maintenance and annulment of marriages, and all proceedings growing out and dependent therein; all civil actions relating to the care, custody and control of children which are not connected or associated with divorce or separate maintenance suits; "to said divisions shall also be assigned for arraignment, hearing and trial all causes arising under the Child Labor and compulsory education laws of the State."

Personnel: Judges to domestic relations courts shall be assigned for a period of not less than two years."

The St. Louis Domestic Relations Court was attacked by the St. Louis Bar Association because of disapproval of investigations by probation officers, and because of the use of the material by the court previous to trial.¹

The writer found no reference to the domestic relations court in the General Laws of Missouri, 1939.

Nebraska ²

Establishment: by administrative rule of court, in 1921.

Type of Court: Juvenile Court and Court of Domestic Relations of Douglas County (city of Omaha)

Jurisdiction: A district court having broad general jurisdiction, including the juvenile-court law, nonsupport and desertion cases; also divorce cases.

New Jersey ³

Establishment: of juvenile and domestic relations courts in each county the purpose of which is "to secure for each child coming under its jurisdiction such care, guidance, and control, preferably in his own home as will conduce to the child's welfare and to the best interests of the state; and when such child is removed from his own family to secure for him the custody, care and discipline as nearly as possible equal to that which should have been given by his parents.

Type of court: Juvenile and domestic relations court.

Jurisdiction: Exclusive jurisdiction over cases of juvenile delinquency and concurrent jurisdiction in disputes involving domestic relations or the welfare of children, the jurisdiction over which is or may be vested by law in any court in the state except chancery or orphans court; in complaints where failure or neglect of one member of the family exists in satisfying or discharging his legal obligation to another member of the family; also in neglect, contributing to delinquency, cruelty, abandonment, abuse or failure to support, or desertion.

Personnel: the judge is appointed by the governor and holds

1 Mary E. McChristie: "Report of the Committee on Family Courts," op. cit., pp. 106-113

2 U. S. Children's Bureau, op. cit., p.32

3 New Jersey, Revised Statutes, 1937, Ch.18, Titles 1-30

office five years or until his successor is appointed.

Extent of coverage: the court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist or psychologist designated by the court in order that the condition or the special needs and the personality of such person may be given due consideration in the disposition of the case.

The general laws refer to the source of enactment as being Chapter 157, Laws of 1929.

1

New York

Establishment: that "the court shall succeed to all the powers and jurisdiction of the children's court of the city of New York, and of that part of the magistrate's court system of the city of New York known as the family court." Provision is made for the establishment of two divisions, one the "Children's Court," the other the "Family Court."

Type of Court: Childrens Court, and Family Court

Jurisdiction: relative to the Childrens Court - exclusive, original jurisdiction over delinquents, physically handicapped, material witnesses, mental defectives, neglected children; in proceedings to determine questions of rightful custody if the custody is subject to controversy; over adults in offenses against children involving issues of delinquent or neglected children, or to determine liability for support.

Jurisdiction of the family court covers proceedings to compel the support of a wife, child, or poor relative, and in connection thereto jurisdiction for the protection, guardianship and disposition of neglected or dependent minors. The court shall require the support of a wife who needs support where there are no children, even though there is no physical or mental disability, where she is industrially incapacitated for self-support; it makes orders for support of a wife by the husband even though she may have left the home, in cases where the husband's conduct or condition or his cruel or inhuman behavior make it unsafe, improper or undesirable for her to continue to live with him; it makes orders for protection, or orders requiring either spouse to stay away from the home, or to visit the children, to abstain from offensive conduct; it requires a person ordered to support another to give security by a written undertaking.

Personnel: Justices are appointed by the mayor, who shall select persons for their character, personality, tact, patience and common sense; to be qualified the person shall have

been admitted to practice as an attorney and counselor at law of the supreme court of the State of New York at least five years prior to appointment.

" The presiding judge shall appoint a chief probation officer, who shall report to him at frequent intervals on the conduct of probation in the various divisions and parts of the court. Subject to the directions of the presiding justice and the administrative control and responsibility of the administrative officers, he shall have charge of the probation work of the court. He shall formulate uniform methods for the probation work of the court and develop processes in the technique of casework, including investigation, interviewing, use of records, analysis of information, diagnosis, plan of treatment, correlation of effort by individuals and agencies, and methods of influencing human behavior. It shall be the duty of this chief to scrutinize the work of all the probation officers and instruct them as to methods and technique and imbue them with proper standards and ideas of probation work."

" Whenever practicable a child placed on probation shall be placed with a probation officer of the same religious faith as that of the child."

Extent of coverage: The court may order mental, physical and psychiatric examinations of the petitioners or respondents in the family court, either before, during or after a hearing; the court may exclude the public from the courtroom in a proper case.

A section relates to the cooperation with other agencies, getting summary statements or information from them, as well as their view as to the proper treatment of the case.

Reconciliation clause: "Except where the circumstances indicate it to be undesirable, in all cases where an application for support has been made, an effort shall be made by the investigation section to restore harmonious relations between the petitioner and the respondent and to adjust the issues raised by the application through conciliation and agreement. A report in writing shall be made to the court in each case of the efforts thus made at conciliation and the result thereof, which shall be part of the case history. Where an agreement for the support of the petitioner is brought about it must be reduced to writing and submitted to the court for approval. The court wherever possible shall see both parties, and shall inquire of each whether the agreement is what they have agreed to."

New York has proceeded very slowly in exercising its non-support jurisdiction, partly because questions have been raised as to the validity of certain parts of the act. In

cautiously proceeding it first undertook collection of orders for support of children placed in institutions or under the care of agencies; then when this work had been well developed it began the collection of support for neglected and delin-¹quent children in their own homes.

A Domestic Relations Court of Buffalo was established in 1924. It previously existed by rule of the court in 1910. This court has jurisdiction over wayward minors, 16 to 21² years of age; desertion or nonsupport cases.

³ North Carolina

Establishment: Authority is given to establish domestic relations courts in counties having a population of 25,000; court may be a joint county and city court or court for the county or city.

Type of court: Domestic relations court.

Jurisdiction: "The court is vested with all power, authority and jurisdiction heretofore vested by law of 1929, Chapter 343, section 3, pertaining to juvenile courts;" in addition exclusive jurisdiction over the following classes of cases: adults charged with abandonment, nonsupport, desertion of any juvenile, or where either spouse is charged with abandonment, nonsupport or desertion of the other; cases involving custody of juveniles except where case is tried in the Superior Court as part of a divorce proceeding; cases of assault and battery on a juvenile, or by one spouse upon another; cases where adult is charged with causing or being responsible for the delinquency, dependency and neglect of the juvenile; all bastardy cases. All cases where adoption is sought should first be brought before the domestic relations court for full investigation and papers filed with the clerk of the domestic relations court. A report is given to the clerk of the Superior Court with recommendations which the judge of domestic relations court makes on questions of adoption. Jurisdiction on all cases wherein any person is charged with receiving

1 U. S. Children's Bureau, "The Child, the Family and the Court, op. cit., p. 37.

2 Ibid, p. 68

3. North Carolina, Code, 1939, Ann., Subchapter 11B, Art. 8B

stolen goods from any juvenile, knowing them to be stolen; all cases involving violation of attendance laws.

Extent of coverage: "In cases where either parent institutes a divorce action it shall be the duty of the clerk of the Superior Court to refer the case for investigation as to the child or children to the domestic relations court, and the judge of the domestic relations court shall make his recommendations to the judge of the Superior Court for the consideration of the judge of the Superior Court in disposing of the custody of the said child or children."

Ohio 1

Establishment: creation of a division for procedures relating to domestic relations and juvenile cases in the court of Common Pleas of six counties: Hamilton County (Cincinnati), in 1914, of Montgomery County (seat in Dayton), 1915, Summit County (seat, Akron), 1917, Mahoning County (seat, Youngstown) 1918, Lucas County (seat, Toledo), 1924, Stark County (seat, Canton), 1929.

Type of court: Domestic relations courts.

Jurisdiction: Court of exclusive jurisdiction over juvenile, mother's pension cases, divorce and alimony, establishment of paternity, contributing to delinquency or dependency, desertion, nonsupport.

Personnel: Judges appoint probation officers, but no person shall be appointed who does not possess such training and experience and other qualifications as may be prescribed by the department of public welfare of the State. All positions shall be in the classified civil service of the county.

Extent of coverage: The court's effort is to prevent the break-up of the family, this being the most important feature of the work--this by an attempt to adjust cases of family trouble before the situation becomes too serious, through interview with the judge. Divorce hearings are informal, similar to juvenile hearings, with lack of conventional procedure.

1 Laws of 1914, 1st special session, p.176 (Code 1930, s. 1639) amended by Laws, 1931, p.50

Laws of 1917, p.721, (Code 1930, s.1532-4).

Laws of 1917, p.703, (Code 1930, s.1532-5)

Laws of 1915, p. 424 (Code 1930, s.1532-1)

Laws of 1923, p. 157 (Code 1930, s.1532-6)

Laws of 1927, p. 95, (Code 1930, s.1532-8)

Statistics

In the Hamilton County (Cincinnati) domestic relations court, during the first year, 1914, 841 divorce cases were heard; 260 were dismissed; 575 granted. From 1915 to 1928, 19,409 cases were filed--15,740 were heard, 13,920 decrees given, 2,693 cases dismissed, 3,360 no hearing. The total case decisions during these years showed a decrease in the number of divorces in that court. ¹

Preliminary Analysis of 100 Confidential Reviews with Applicants for Divorce in Hamilton County, Cincinnati, under the direction of Judge Charles W. Hoffman, 1922. ²

This is a cursory summary of 100 cases taken at random from 1000 successful applicants for divorce, interviewed by experienced social workers, with a view to discovering intimate facts, the court not having an expert staff, nor authority to make psychoanalysis of all its applicants for divorce. Studies were made at close range over a period of eight years, 1914-1922.

Economics: the families were found to be better off than the average by a slight margin. Half the husbands earned over \$18 a week in 1915; \$16. being a fair wage. Occupation: 13 were unskilled laborers, 36 skilled, 26 salesmen or clerical workers. Housing: one-third lived in 2 rooms; 10% in single room. This factor was connected with insecurity of home relationship and husband's failure to provide rather than low wages. Ethnic cultures: much smaller percent of foreign born than is usually found. Marriage without religious service accounted for 33 1/3% of the ceremonies (twice the normal proportion). Length of marriage varied from a few weeks to over 20 years; half lasted 4 years or more; one-third, ten years or more; 60% were childless. The average number of children were 2, of those having children; this included children of past marriages (113 children involved). The wife was the applicant in 75% of the petitions. Decrees were granted in 59 cases, 19 cases continued or dismissed; no disposition given in 21 cases. The cause of 90% was alleged to be criminal or gross neglect of duty. The real reason for unhappiness in 97 cases was maladjustment in sex relationship. This was the core of cruelty, abuse, neglect and wrangling which made life together impossible.

Thirty-two, or 40% of the girls married before they were 20 years old; husband was five or six years older. (Normal proportion of such marriages is about 12 or 13% instead of

1 U.S.Children's Bureau, op. cit., p. 72

2 Alfred C. Crouse, "The Divorce Problem in the Domestic Relations Court," National Probation Association Yearbook, 1922, pp. 135-41

forty per cent). It was believed that girls under 20 years of age who marry men five years their senior are nearly seven times as likely to get into the divorce court as girls who marry later, and who marry men more nearly their age. The ages of the 32 girls ranged from 13 to 19; one-half were 17 or younger. The men were from 22 to 53; half were 25 or older. These marriages were not of the run-away type, marrying with strangers; 20 knew husbands for year or more; none knew husbands for less than one month. In 10 of 32 cases, engagements of 5 were for over 4 months; a few sudden decisions to marry, but the typical girl had plenty of time. Six cases were seduced before marriage, two others admitted unsuccessful attempts to seduce. Six men had venereal diseases before marriage; two were previously divorced. After marriage eight or more expressed aversion to having children, and in several instances compelled or persuaded wife to abort.

1

Oklahoma

Establishment: In every county having a population of more than 90,000 inhabitants, being within a judicial district of the district courts.

Type of court: Family Court

Jurisdiction: Concurrent jurisdiction in divorce cases with the District Court, including separate maintenance, alimony and proceedings arising out of divorce cases. Jurisdiction in juvenile and adoption cases; concurrent jurisdiction in all matters relating to juvenile and adoption cases with the county court of such county, except as to matters of probate.

According to a compilation of functioning domestic relations courts shown in the Book of States, 1945-6, Oklahoma has not as yet begun to put these statutes into operation. Two counties qualified as to population, Tulsa and Oklahoma. After the passage of the Act in 1925, the district judges of Tulsa County declined to assume jurisdiction because it was their opinion that the law was unconstitutional.

1 Oklahoma, G. L., 1941, Section 731

1

Oregon

Establishment: in counties having a population of over 100,000, being a branch of the Circuit Court.

Type of Court: Domestic relations courts.

Jurisdiction: "The court shall have original and exclusive jurisdiction in the following: proceedings concerning dependency, delinquency or neglected children; over all proceedings for the apprehension, trial and punishment of persons charged with contributing to the delinquency or dependency of minors; all proceedings for the adoption of children and the change of name; all proceedings for the examination and commitment of feeble-minded, idiotic, epileptic or criminally inclined persons, 18 years of age or under to institutions or otherwise for custodial care."

Concurrent jurisdiction with the Circuit Court in all proceedings for the apprehending, trial and punishment of any person charged with failure or refusal to support his wife or children, as defined by certain named chapters.

Personnel: Appointments of all probation officers and assistants, except court stenographers, shall be approved by the child welfare committee of the State.

Extent of coverage: Child Welfare Committee consists of five members who are to serve without compensation. One member shall be from the faculty of the University of Oregon, selected by the President of the university, such person to be an expert in psychology and sociology; one a physician selected by the President of the State Medical Association, and should be a specialist in child hygiene or children's diseases; three citizens of the State experienced in child welfare work, these to be appointed by the governor. The duty is that of adequately supervising the child welfare work.

Pennsylvania 2

Establishment: by administrative rule, in 1914. The court interpreted its powers from Acts of July 12, 1913, P.L. 711, Section 11, which section was amended by Act of June 17, 1915, P.L. 1017, and Act of July 17, 1917, P.L. 1015. This is a domestic relations division of the municipal court of Philadelphia, operating separately from the juvenile division.

1 Oregon Compiled Laws, Annotated, 1939, Vol. 6, Ch. 5, Sections 93-501-515; Section 93-236-237

2 Thirty-first Annual Report of the Municipal Court of Philadelphia, 1944, p. 129

Type of court: Domestic Relations Division, Municipal Court of Philadelphia.

Jurisdiction: Exclusive jurisdiction over the custody of children, desertion or non-support of wives and indigent parents.

Personnel. The board of judges of Municipal Court shall appoint the chief of the probation department, at a salary not to exceed \$5000, and additional officers at salaries not to exceed \$2500. Persons appointed shall be discreet. In no case shall a defendant be committed to the custody of a probation officer of the opposite sex.

Extent of coverage: "In one sense, the domestic relations court is a reconciliation court, as distinguished from a separation or divorce court, concerned with the problems of integrating family life rather than with those factors that must keep it apart.....The method pursued is to bring together both husband and wife informally, afford them an opportunity to air their grievances, and attempt to reconcile them for the protection of their home and children. In other words, the court is not only concerned with what abruptly occurs in the courtroom, but also with what takes place beyond its limited physical environs. Its influence is most real and effective when it can thus enter, as it were, its proper "extra-legal" domain."

Where reconciliation is not always possible, because the disruption may have become so resolved that nothing can be done, then the case is brought to the courtroom. Then the court decides upon the custody of the children; or enters a support order to compel obedience thereto; or to treat some other factor, such as drunkenness or extravagance, which may be at the root of domestic infelicity.

Statistical Data ¹

The new in-take of families in 1944 numbered 3,653, which is the lowest number of cases since its organization in 1914; the number then was 6,120. The domestic relations division had contact with approximately 16,000 different families during the year 1944, and since its organization has dealt with 169,925 families. Its bulk of work is concerned with the non-support of wives and children, over 90% of the new complaints referred to the court during the 31 years being cases of this nature.

¹ Thirty-first Annual Report of the Municipal Court of Philadelphia, 1944, pp 129-170.

Drunkenness is a causal factor in desertion and non-support; its relative importance is shown in analysis of records: in 1915, 38% of non-support was due to alcoholism on the part of husband; in 1916, 45%. It reached as low as 7% in February, 1920, the month following the National Prohibition Act, but gradually increased till March, 1923, when it reached 26%; it has fluctuated irregularly since, being 22% in 1941.

Ages: the youth of the parties does not seem to be a predominant factor in the problem of desertion and non-support; 52% of the wives and 37% of the husbands were under the age of 30; 3% of men were under 21, and 9% of the women; the peak seems to be between the ages of 25 and 29, both for husbands and wives.

Length of married life: the problem of desertion and non-support appears to be one of the early years of married life; nearly 47% were brought within the first six years; the high-water mark, in 1944, was in the third year of married life, when 308, or 9.3% of the cases showed ruptures of family ties; 305, or 9.1% were in the fourth year; 293, or 8.8% during the second year; 261, or 8.1% during the first year. One hundred cases were referred to the court during the first six months. In many cases the actual break in relationship occurred before the case was referred to the court.

Number of children in family: about 29% or 991 of the 3408 families in desertion and non-support cases were childless in the present marriage (192 had children of either husband or wife by a previous marriage; 145 with children of the wife, 34 of the husband, 13 with children of the husband and of wife; thus 23% had no children at all living in the home. Families with children of the present marriage were 2,417; 1,058 had one child; 733 two children, 348, three children; 137, four children; 74, five children, 66 had six or more children.

1

Rhode Island

Establishment: a court sitting as part of the superior court to hear and determine all petitions for divorce.

Type of court: Court of domestic relations

Jurisdiction: The hearing and determination of all petitions for divorce from the bond of marriage and from bed and board, all motions for allowance, alimony, support and custody of children, and other matters affecting the parties and their children, wherein jurisdiction is acquired by the court by the

filing of such petitions for divorce.

Extent of coverage: "To the justice of the said court shall also be referred for hearing, adjustment, reconciliation, decision and sentence all causes properly brought in said court or appealed from other courts in which the defendant is accused, as provided by statutes of abandonment of wife or children or both, according to defendant's means; neglect or refusal of habitual drunkard to aid in the support of defendant's family; neglect and refusal by children over 21 years of age to provide for the support and maintenance of its father or mother; threat to commit crime or offense against the person or property of defendant's husband, wife, child, father, or mother; assault, assault and battery, or assault with a dangerous weapon, or attempt at such assault upon defendant's wife or husband or children or upon a parent by his child."

Reconciliation clause: "In the above causes the court sitting as a court of domestic relations shall seek to reconcile the parties and reestablish friendly family relations, to this end may suggest and hold conferences in chambers with the parties interested, and with their counsel," if they have counsel. The court is authorized to seek the cooperation of all societies or organizations public or private to the end that the court may be assisted in every reasonable way to prevent the separation of the family and to effect a reconciliation between its members (this last was added by Public Law, 1935, Chapter 2254).

1

South Carolina

Establishment: in all counties in the State, containing a city, having a population of over 70,000, according to the official United States census. The court to have two divisions, the Children's Court and the Family Court.

Type of court: Domestic Relations Court

Jurisdiction: The Children's Court shall have exclusive and original jurisdiction over cases involving children under 16 years of age; the hearings shall be separate and apart from cases against adults except where adults and children are involved in the same case.

The Family Court shall have jurisdiction to compel the support of wife or children, for the protection, guardianship and disposition of negligent or dependent minors; jurisdiction against persons charged with failure to pay an

1 South Carolina, Code of Laws, 1942, Volume 1, Ch. 4-A, Sections 256-1 to 256-12.

order of the court; the court may bring in parties in proceedings who are charged with or alleged to be interfering with the marital relationship between husband and wife in violation of law or rights of either party to the marriage, or whose presence as a party may be found necessary to a complete determination of the issues being heard. The court has a restraining power regarding interference.

Personnel: The judge is appointed by the governor; he should be an attorney and counselor of the Supreme Court of the State at least ten years, and be selected because of character, personality, tact, patience, and common sense. Salary \$3000 a year. His term of office is seven years.

The probation officer is subject to the direction of the judge, and "shall have charge of the probation work of the court, formulating uniform methods for probation work, and developing processes in the technique of case work; his duties shall include investigation, interviewing, diagnosis, plan of treatment, correlation of efforts by individuals and agencies, and methods of influencing human behavior." His salary should not exceed \$1800.

1

Tennessee

Establishment: The court "shall be held by the judge of the second division of the Circuit Court of that county." It shall be a court of record.

Type of court: Juvenile and domestic relations court.

Jurisdiction: The judge shall hear juvenile cases, and the court shall have original and exclusive jurisdiction in matters and proceedings growing out of disposition, custody, control of delinquent, dependent or neglected children; original and concurrent jurisdiction with circuit and chancery courts in all cases of divorce, including laws for alimony, support and maintenance of wife. The judge may transfer from the circuit and chancery courts any and all divorce cases in his discretion; original and exclusive jurisdiction in cases involving the disposition, custody and control of minor children. Failure to care and provide for wife and children shall be an act of misdemeanor; but if husband wilfully leaves the State after abandonment of wife or child under 16, leaving these liable to become public charges, the act will be considered to be a felony.

Personnel: The judge appoints the probation officer, who should be a suitable person and have a salary not to exceed \$200 a month.

1

Virginia

Establishment: Provision for establishing a court in any city or county having a population of 25,000 inhabitants or more.

Type of court: Juvenile and Domestic Relations Court.

Jurisdiction: Exclusive original jurisdiction concurrent with justices of circuit courts over matters and procedures involving: disposition, custody and control of delinquents, dependents and neglected children, enforcement of laws for the education, protection, or care of children, prosecution and punishment of persons charged with ill treatment, abuse, abandonment or neglect of children, or who contribute to the delinquency, dependency or neglect of children under 18, or with offenses against children; and jurisdiction over persons who knowingly contribute to the disruption of marital relations or of a home.

Personnel: Any court upon recommendation of the State Board of Public Welfare may appoint a deputy, any members of the police force of a city or constable of a court to act as a probation officer

The governing body, council, in any city of the commonwealth shall elect a special justice of the peace, who shall be a person licensed to practise law, to be known as the judge of the Juvenile and Domestic Relations court of such city, who shall hold office for the term of six years, and until his successor is elected and has qualified.

Extent of coverage: All persons except officials of the court, attorneys and witnesses, the accused and parties necessary thereto shall be excluded from the hearing, which shall be in chambers.

The act provides for the liberal construction of its rules--these to be remedial in character; the powers are intended to be general to effect the beneficial purposes for which it was intended, proceeding upon the theory that the welfare of the child is paramount. Judges shall possess all necessary and incidental powers and authority whether legal or equitable in their nature.

2

West Virginia

Establishment: a court in the county of Cabell to be known as the Domestic Relations Court, to be effective March 9, 1939.

1 Virginia Code, 1942, Annotated, Ch.81, s. 1945

2 Acts of W.Va. Legislature, Regular Sessions, 1939, p.715, Ch. 154.

Type of Court: Domestic Relations Court of Cabell County

Jurisdiction: Concurrent jurisdiction with the Circuit Court in all matters pertaining to annulment of marriages, separate maintenance, divorce, alimony, custody and maintenance of children of litigants, care and disposition of delinquent, defective, neglected and dependent children, and for the enforcement of the general school laws arising within said county.

Personnel: Probation officers shall be appointed by the circuit court. The county director shall be ex-officio the probation officer of juvenile courts.

1

Wisconsin

Establishment: In every county having a population of 500,000 or more, and containing an entire judicial circuit for which more than one judge is provided by law, there is created a department of domestic conciliation.

Type of court: Family court--department of domestic conciliation

Jurisdiction: over hearings of cases of child care under the age of 18, and of adults charged with contributing to the delinquency or dependency of children found delinquent or dependent; on questions of custody of minor children where divorce is seriously contested.

Extent of coverage: "The department of domestic conciliation shall be under the direction and supervision of a director of domestic conciliation; the latter shall receive domestic complaints and make proper disposition thereof; make investigations of facts upon which to base warrants in cases; exercise supervision of said court."

Personnel: "The department shall have men and women investigators as may be provided by the county board of supervisors of such country, the investigators to be appointed by the board of supervisors under civil service rules. Probation officers of the juvenile court shall assist the director to carry out the interests of the act. "

CHAPTER VI

PRESENT PRACTICES IN DOMESTIC RELATIONS CASES IN SOME OF THE DISTRICT COURTS IN MASSACHUSETTS; PROBATE COURT PRACTICE

A. District Court Practice

The writer will next attempt to outline the present common practices in domestic relations cases in the district courts of some of our Massachusetts cities. The cities were chosen from each of the larger counties in the Commonwealth: Suffolk, Middlesex, Norfolk, Essex, Plymouth, Hampden and Worcester. Bristol county was omitted because of failure to reply. Three counties, Duke, Franklin, Nantucket, were not included because of their size (the present emphasis in domestic relations courts is in large centers). The information was mainly given by the clerks of these courts, exceptions being Cambridge, Malden and Springfield, where the information was obtained from probation officers.

Boston Municipal Court, Criminal Division

This court has two divisions: civil and criminal. The criminal division is divided into three sessions: the first is for the hearing of general cases; the second for traffic cases, and cases where the defendant is a female; the third session is for domestic-relations cases. In this session complaints of the following types of cases have been heard since 1912: assault and battery, desertion, non-support, bastardy, neglect of children, drunkenness, non-support of destitute parents, violations of the school attendance act,

contributing to delinquency, child labor, or failure of any other obligation owed to a family relationship.

The procedure is not different in this court than in other courts: cases being heard in the regular way, with no private hearing except in illegitimacy or paternity cases. There are doctors and psychiatrists attached to the Municipal Court staff, but these are used only in the discretion of the court. The probation officers investigate the cases and make such reports or answers to the judge's questions as are necessary. It is at this point, during, trial, that the court can get some greater understanding than ordinarily can be obtained by evidence; the probation officer's report is of invaluable assistance in determining disposition. Needless to say a strong tool of preventive court action may be handled through the clerk's office before the issuance of the complaint. He may determine whether the facts warrant a complaint, and whether the irate or disturbed spouse actually desires to go through with the case. He also lists for pre-hearings such others as show a need, or which are requested by the defendant. The latter has such right, where the complaint is for a misdemeanor under Chapter 293, of the Acts and Resolves of 1945.

A comment¹ by the Chief Probation Officer of the Boston Municipal Court some years ago is illustrative of the inadequate preparation of the public for this new idea of a family

1 Mary E. McChristia, op. cit., pp. 106-113

court. He said:

As we advanced and tried to make more scientific studies to render greater efficiency in this particular line of work, we actually saw the need of someone (and it should be the judge) to be in a position to deal with all phases of the family question. Some years ago we thought it desirable to have the court assign a judge to sit regularly in this so-called Domestic Relations Session, but that suggestion met with the opposition of the justices. Legislation was sought whereby an additional judge might be appointed, fitted because of his treatment and qualification to sit permanently in this division. This was opposed to some extent by the justices and consequently the legislation was not enacted.

The District Court of Springfield

This court attempts to seek certain ideals of the family court through its methods of handling the particular situation. All domestic cases that can be seen out of court are handled by the Probation Department in as many interviews as is necessary. If the results of the interviews are not satisfactory, the complainant is then advised to make a formal complaint and the case is then brought before the court. However, domestic relations cases are all heard informally in the same court as hear juvenile cases. Case work techniques are used in interviews, the same as is practiced in any case work area, with emphasis on as much of the out-of-court work as far as is possible.

The unmarried mother's cases or illegitimacy cases are treated in a special way. The complainant is interviewed quite thoroughly by the probation officer handling these cases, she being the person, who it is considered really needs case work treatment and help with the problems which she

presents. An attempt is next made to see the alleged father, including the complainant. At this time the probation officer decides whether the facts indicate a conclusion that paternity can be established or not. The woman probation officer at this time recommends to the clerk of the court whether or not a complaint should be issued, based on the facts as she has discovered them. However, if it is shown that the man is not responsible, no complaint is recommended. If paternity can be established, a complaint is recommended not only for that purpose but to determine what the alleged father's resources are for the support of the child. In the interview, prior to the issuance of the complaint, the complainant and the alleged father are made thoroughly familiar with the purposes of the complaint and what is to be accomplished. The alleged father after that agrees to come to the court voluntarily, so that there is hardly ever a summons or warrant issued in one of these cases. The alleged father on the day allotted agrees that he is responsible, or else comes prepared to have a trial, which will take place in the same informal court where juvenile cases are held. After paternity has been established, the adjudicated father is placed on probation, with an order to pay toward the support of the child. This way of handling is productive of satisfaction on the part of the adjudicated father, and the court usually has very little trouble in collecting the payments. During the man's period of probation, the probation officer works with the unmarried

mother, using all the community resources to help her with her problems. It is felt by the court that this form of practice makes for greater understanding of the adjudicated father's responsibility; it saves him from being arrested, held, and losing his job and standing with his family and friends.

Central District Court of Worcester

Domestic relations cases are handled informally by the Probation Department as out of court cases. However, where a complaint is issued and there is a court appearance, there is no private hearing. Adult cases are heard in the Juvenile Court when the complaint against the adult is for the neglect of the child or for contributing to the delinquency of a minor.

There is no psychiatrist on the staff, the court having to depend on the making of referrals to public and private agencies whenever the need exists. Prior to the war it used the services of the psychiatrist from the local Board of Public Welfare when required.

Third District Court of Eastern Middlesex, East Cambridge

Whenever a person comes to make a complaint, interviews are given by the clerk in the hope of weeding out such cases as can be taken care of without a hearing. Where complaints are issued the case is heard informally whenever possible, and not in open court room. Paternity cases are private, the complainant and the alleged father being heard in a separate chamber, a woman probation officer handling these cases. Case work treatment is given the complainant, and she is referred to such

agencies as may help her in some particular need. There is a psychiatrist on the staff.

Second District Court of Eastern Middlesex, Malden

The probation officers do much of the ground work with the complainants who come to the clerk's office. The latter refers cases which need interviews to them. A large percent do not go forward with the complaint. However, where these persons insist, the court has no other recourse than to issue one and summons the accused. Much emphasis is put in getting a good understanding of the case through interviews with such persons as the problem involves, at the time of the intake as well as on subsequent interviews.

District Court of Newton

This court handles each case according to what it necessitates, fitting a certain procedure to the particular circumstance. The clerk, being the official person to issue complaints, listens to the facts and observes the tenor of the persons before him. Sometimes talking with the complainant is all that is required, at other the person is referred to the probation officer. If the case goes to trial, the matter is heard in open court according to standard procedure.

Municipal Court of Brookline

There generally is no private hearing, the cases being tried in the regular courtroom, except illegitimacy complaints. Referrals are made to the probation officers for the purpose of investigation and report. There is no psychiatrist on the

staff; when it seems advisable to have an examination, the person is referred to the Department of Mental Health. The court, however, infrequently uses this service. There are preliminary hearings in certain cases prior to the trial on the complaint.

District Court of Eastern Norfolk, Quincy

Usually the cases are tried in the open court. Where the cases indicate privacy, such as illegitimacy or certain sex offense cases, they are heard in private chambers. The probation officer makes such investigations as are necessary, furnishing the court with a report of his findings. Should the case need examination by a psychiatrist, it is referred to the Medfield State Hospital, this being the nearest public agency.

District Court of Brockton

When a complaint for some criminal offense is issued, it is followed by an investigation of the probation officer before it is heard. Sometimes a private hearing is requested; in such instances the persons are interviewed by the probation officer, who then determines whether the request should be granted. At any time that a complaint is issued the accused is tried, the procedure being the same for domestic relations cases as for other criminal cases. The decision to issue complaints rests with the clerk; it is through his referral that the case is brought to the probation officer's attention, where the clerk wishes to obtain supportive judgment.

First District Court of Essex, Salem

In assault and battery cases, after complainant appears before the court clerk to make complaint, a letter is sent to the accused requesting his presence. At this time the clerk hears both the husband and the wife, and then determines whether to issue a complaint. In cases of non-support, the probation officer is notified, who then makes such investigation as is necessary, presenting his report and recommendations to the clerk.

District Court of Lawrence

When a complainant appears before the clerk of the court, the latter determines whether he will issue a complaint and warrant for the accused when he learns the facts, as well as the true intent of the party before him. A substantial percent are actually not ready to go through with court trial, feeling satisfied that they have reported their case to an authoritative source. Those cases which are heard, are in open court, except certain ones whose privacy are indicated. The probation officer investigates referrals made to him.

District Court of Lowell

Non-support cases are turned over to the probation department, where an attempt is made to get the husband to agree to make certain payments. Preliminary hearings are given when the accused applies for such before actual trial on a complaint; at this time the court decides whether the complaint shall lie. Court hearings are not usually private or informal.

There are two psychiatrists to whom certain cases are referred to for examination. These are not members of the staff, but are employed when necessary.

Municipal Court, Roxbury District

Private hearings are given in juvenile delinquency and illegitimacy cases. Other cases are tried in the usual manner in open court. Considerable emphasis however is given to thorough probation work from the beginning of the time the case first reaches the department to the termination of its follow-through process. There are no staff psychiatrists. Where referrals are made, the person is sent to a private agency or to the Boston Psychopathic Hospital.

Court practices in Massachusetts in the criminal sessions of the district courts are generally agreed as to the privacy of juvenile cases, as well as those to establish paternity. Cases are commonly referred by clerks to probation officers before the actual issuance of complaints. Although in the talks which the writer had with the clerks of the several district courts, they did not always mention preliminary interviews with the complainant prior to issuing complaints, it can be safely assumed that this was done in most instances. The assumption holds true as to cases which point the need of referral to a probation officer prior to the clerk's issuance of a complaint.

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DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

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B. Probate Court Practice

In the Probate Court, contested divorce cases are formal. They are listed for trial; when the case is ready for hearing both the libellant and the libellee, each with their witnesses appear before the court to give testimony. They take the stand and are examined and cross-examined on legal issues. Where there is no contest, the libellant and witnesses are required to take the stand and testify as to the cause of the divorce, bringing out the necessary facts through evidence. Custody and maintenance questions are brought out during the trial.

Separate support, adoption and guardianship hearings are usually informal and before the bench. These are public. Conferences and hearings may be done in a low voice so that the audience is not able to follow the conversation.

The investigation of cases is infrequently practised, so far as referrals are concerned to probation officers, police or other agencies, on questions of marital problems or disposition of children to one or the other spouse. Usually the custody of the children is granted to the petitioner, who is the mother in the major petitions, or to the non-erring parent.

Adoption petitions, as previously stated, are referred to the Department of Welfare, for investigation as to character and financial ability of the new parents, before the case is ripe for the granting of the petition. If the Department has recommended it, then the parties are advised of the fact;

they may choose to appear in court at any uncontested court session thereafter, where an informal conference is held before the bench, the granting of the petition usually follows.

Massachusetts Divorce Statistics, 1944

1

Applications for Divorce

Over 4 out of every 5 filed were granted by the courts. There has been a fluctuation during the past twenty-five years, 1920 to 1944--the lowest proportion was in 1929 (71.1%); the highest in 1940 (90.7%). During the entire period 86.5% of the applications were granted; .5% refused; 13.% dismissed.

Contested Cases

Of the total applications for divorces between 1920 and 1944, only 25.5% were contested; in 1944, of 7,171 divorce applications 2,469 or 34.4% were contested; of the 6,312 granted, 1,921 or 30.4% were contested. The proportion of contested cases is larger for divorces granted to the wife (32.2%) than for those granted to the husband (25.4%).

Number of Divorces

Divorces granted in 1944 were 6,312, an increase of 1,116 or 22.7% more than in 1943, and 1,463 more than average number granted for the five-year period, 1939 to 1943.

Divorce Rates

The number of divorces granted per 100,000 population was 145.3 compared to 118.6 in 1943, 125.0 in 1942, 110.1 in 1941, and 104.3 in 1940.

Divorce rates based on married population show the following relationships between 1915 to 1940: married population to one divorce--1915, 640; 1920, 491; 1930, 479. The married population for 1935 and 1940 was not available.

Party to which granted

The wife was granted three fourths of the total number of divorces during period 1920 to 1944. The difference may be partially explained by fact that possibly husbands more often than wives give occasion for divorce; partially because the common grounds for divorce are more applicable against the husband, that is neglect to provide, cruelty-latter, so far as it is physical cruelty is not ordinarily open to husband, although they sometimes are granted divorce on this ground.

Divorce Classified by Causes

Cruel and abusive treatment, 48.3%; desertion, 39.9%; adultery, 4.9%; intoxication, 3.6%; non-support, 2.7%; imprisonment, .4%; impotency .2%.

TABLE I
Marriage and Divorces in the United States¹

Year	Marriages		Divorces	
	No.	Per 1000 population	No.	Per 1000 population
1920	1,274,476	11.96	170,505	1.60
1930	1,126,856	9.15	191,591	1.56
1940	1,565,015	11.90	264,000	2.00

It is shown that the ratio of divorce decrees to the number of marriages performed in 1944 is 5.95, or approximately one divorce to every six marriages. The above table does not show the marriage population.

Dr. Clifford R. Adams, director of the marriage counseling service at Pennsylvania State College, in a statement before the Massachusetts Society for Mental Hygiene, May 9th, 1946, held at the Hotel Sheraton, Boston, Massachusetts, stated that many war marriages are seen as failures; that sixty-five per cent of all marriages contracted during the war would end in separation or divorce; that in eighty per cent of the cases the women will take the initiative in the divorce courts. "If the present trend continues--and there is nothing in sight to stop it--by 1965 one-half of the marriages then being contracted will end in separation or divorce."

¹ The World Almanac and Book of Facts for 1946, Pub. by New York World Telegram, New York.

² The Boston Herald, Friday, May 10, 1946, p. 13

PART III

CHAPTER VII

SUMMARY AND CONCLUSION

A. Summary

The study has revealed that in none of the communities where family courts were developed was there one which exercised complete, exclusive jurisdiction over all types of cases, as will be seen by the categories below. Five main forms of organizations existed; a few courts did not come under any of these five.

1. A family court of juvenile and broad adult jurisdiction, including divorce, desertion, non-support, contributing to delinquency and dependency, but not including adoption and guardianship:

The States of Ohio, Rhode Island, Tennessee and West Virginia come under this grouping.

2. A court having juvenile and limited adult jurisdiction, including some of the types of cases listed under numeral 1:

The States of Alabama, Florida, North Carolina, Oregon, and Virginia come under this grouping.

3. A court of broad jurisdiction, having both juvenile and domestic relations cases, but not divorce:

The States of Colorado and New Jersey come under this grouping.

4. A domestic relations court, separate from the juvenile court, with jurisdiction over desertion, non-support, sometimes illegitimacy, and certain offenses against children, but where divorce is not included:

The courts of Chicago, Illinois, New York City, and courts in the State of South Carolina come under this grouping.

5. A municipal or district court with juvenile and domestic relations jurisdiction, with special organization either by law or rule of court for domestic relations cases:

The States of Nebraska, Iowa, and courts of domestic relations in Philadelphia, Pennsylvania come under this grouping.

The courts found in California, Michigan, Oklahoma, and Wisconsin, as indicated by statutes, have special forms making for a miscellaneous grouping:

California has a Children's Court of Conciliation; Michigan has a "friend" of the court who appears at court hearings; Oklahoma has never established a court after the passage of legislative enactment. It appears to have broad powers similar to the courts in Ohio, and might properly be included under the first classification enumerated above. Wisconsin provides for a court of conciliations in all domestic cases.

The theory of domestic relations courts has not gained as much acceptance as has that of its predecessor, the juvenile courts. In organization and administration, family courts show wide variability, just as the juvenile courts show; in some states there is little more than a legal provision for their establishment, while in others the courts are well developed and adequately staffed. While the effectiveness in some measures depends on the legal framework, the quality of service rests primarily with the judge and the court personnel. The latter in turn rely on the quality and quantity of services available, and the resources which are open to them. Systems of filling positions show weakness, often in the failure to recognize the need for special training in the staff personnel. Courts must depend on outside help

in the community to diagnose and secure treatment for their clients.

Fortunately there is a section of the Social Security Act, being Title V, Part 3, providing for child welfare, which makes available services to dependent, neglected children, and those in danger of becoming delinquent. These services are especially needed in rural areas, which are presently untouched by such domestic relations courts as have been established. However, the services under this Act are of varying degree in the separate States, depending on the matching of funds of State and federal governments, as well as the allocation of money by the latter.

Specialists, medical, psychiatric, psychologic, are obtainable, where desired by the court through public and private clinics. State welfare and health departments have facilities for extending their services from cities or county centers to adjacent rural areas.

A large number of the courts studied indicate a tendency to, and considerable emphasis on unofficial adjustment. Such courts are able to save from trial or hearing numerous complaints for trivial offenses, or problems which are superficial; they handle these by talks or warnings to the errant one. Some have agencies to cooperate in the unofficial adjustment. In certain of these cases a rather comprehensive technique has been used for this kind of service, which includes interviews with the complainant and defendant, home

At the same time, the government has been working to improve the quality of the education system, and to ensure that all children have access to a good education.

The government has also been working to improve the health care system, and to ensure that all people have access to a good health care system. This has included building new hospitals, and improving the quality of the health care services provided.

In addition, the government has been working to improve the infrastructure of the country, and to ensure that all people have access to a good infrastructure. This has included building new roads, and improving the quality of the infrastructure services provided.

The government has also been working to improve the social services of the country, and to ensure that all people have access to a good social services system. This has included building new social service centers, and improving the quality of the social services provided.

visits, joint interviews, with certain agreements between them, followed by approval by the court. The services of an attorney in such cases is not required; this saves needless expense to the individuals concerned and to the court in the handling.

Investigation of cases includes precourt work, and supervisory reports on cases over which the court has a continuing jurisdiction--either probation, or court orders for custody and maintenance. Social histories have been attempted in the main classes: juvenile cases, desertion, non-support and divorce. Inquiries and criticism have been made by bar associations regarding the legal status and activities of investigators. They have attacked case reports, stating in their findings that the reports of investigations included much hearsay evidence; that there was undue authority assumed by the investigators in probing into the personal affairs of the individuals.

There is not the difficulty of legal criticism on the so-called criminal types of domestic relations cases: juvenile delinquency, desertion, non-support, because the court in the first place is officially the plaintiff. The complaint reads: "Commonwealth (or the "State) of versus.....defendant (or delinquent)." The State is concerned under constitutional welfare provisions; it has sovereignty.

If investigations are to be accepted as an important

in the realm of divorce cases, it seems to the writer that changes in the law should be made. These might be in the form of making divorce a matter of state inquiry because of the breaking up of a home; that this is a repercussion on the community at large. Legislation should sanction the use of case reports or investigators' findings, perhaps placing special safeguards by limiting the investigative work to officers of the court.

Cases on non-support and desertion, illegitimacy, contributing to delinquency or dependency of children are for the most part conducted in a simple manner in courts which have the social point of view--that is with more or less informality, unless the cases are contested, or jury trials are demanded. There are other courts, in the group studied, which conduct their hearings in a formally arranged courtroom, as is the prevalent system in Massachusetts. Open courts allow the admittance of spectators who wish to watch the proceedings; when such courts have cases requiring privacy, they are heard in the judge's private office, or in special chambers.

The different courts showed variances in the constructive supervision of probationers; in the extent of methods requiring compliance of court orders for the payments of money, in desertion and non-support cases. The follow-up treatment for illegitimacy cases has not been particularly indicated.

No supervision of children involved in divorce cases is

apparent. This is a group which suffers great insecurity and has numerous problems in the post-court period, after the home breach has been effected through judicial decision. Children are made unhappy in being jostled about between custodial parent and the one who is to be visited; they are threatened by economic loss when maintenance is not forthcoming regularly; they are the recipients of the emotional disturbances and attitudes of one parent to the other, as they face the one and then the other.

Variation of standards, or approaches to ideal forms of domestic relations courts are demonstrated. When judges regard their work as a specialty, considerable sincere interest is shown in the application of methods. But this situation does not exist where the period of the judge's service is short, or his duties are not specifically confined to these courts.

Conciliation service or special adjustment boards have not been universally developed. There is little evidence of the establishment of boards of reviews, like that described for Alabama, which can go over the past performance of their court work for appraisal purposes. There are few courts equipped to do research work. Even the longer existing juvenile courts have not been functioning in this respect; our dependence has been in private agencies, namely child-guidance clinics, for accumulative information and material concerning causes and methods of treating delinquency. This is

invaluable as a basis for developing programs of treatment and prevention.

Research in the field of marital maladjustments and other domestic difficulties is equally necessary. Little has been as yet attempted. It is undoubtedly too early to expect to have the newly established family courts equipped with facilities for scientific probing, under present conditions of organization. However, as private effort is carried on in the child guidance movement, it might likewise be an excellent nongovernmental endeavor to establish domestic relations clinics equipped to render diagnostic service and professional assistance in the medical, psychiatric and social fields. The writer was surprised to note that such clinics have not been established, in view of the fact that much social phenomena is based on home environment and family relationships. Should such an agency be established, much factual material could be obtained upon which to base programs of prevention and treatment, as well as measuring the efficiency of legal and non-legal agencies dealing with family maladjustments. The study also discloses the absence of statistics on separate support; this is also lacking in the United States census reports.

B. Conclusion

In this thesis there has been presented a study of the judicial organization in Massachusetts for dealing with family problems. The writer has indicated the type of cases handled by the separate courts, and the methods of practice. Attempt

has been made to show what twenty-two other States, who have so-called domestic relations courts, are doing in their individual spheres.

The different geographical areas do not show identities of legal practice because of location. The twenty-two States show a variation in the evolutionary process of the establishment of domestic relations courts, starting with the embryo of small extensions from juvenile courts' jurisdiction. We do not have an explanation as to why a particular State chose its special way of doing; nor how it took legislative form in each instance, nor what recommendations existing courts would make as a result of their experiences. There have been evidences of struggle, as well as evidences of success. The latter is shown by inference through articles appearing in the various legal reviews of States and colleges; these describe recently created family courts in enthusiastic terms.

Cautiousness is much in evidence in the initial years of the domestic relations courts' existence; some have received criticism, inquiry, and direct attacks on the constitutionality of newly established practices. But the survival of courts which have broad liberalized powers indicates that these have found successful means to overcome legal knotty problems. Here too is a field for study, which should be helpful to those still operating under stubborn orthodox forms, quite resistive to change.

Massachusetts statutes do not by expression recognize

the family as a unit, for purposes of court procedure. How far should the law go in the solution of domestic difficulties is a question. It would appear to the writer that that part of the law which relates to the family should be modified. Statutes should make the rights and obligations of the family sovereign to the rights and obligations of the individual member, of which it is a part. The grant to individual rights would not be derogated, unless it infringed on the former. The present objective in divorce and separate support proceedings in this Commonwealth is that it satisfy legal requirements as to grounds. It would seem that it should have a social aim of rehabilitation of the family, and that this be incorporated in the statutes. There are cases it is recognized where it is the duty of parents to divorce each other for the sake of the children, rather than to continue conditions which would lead to a duplication of the parental attitudes. A person unadjusted emotionally or socially, will find the greatest difficulty in making happy adjustments in the face-to-face relations of a family group; hence something more should be known of what affects parent and child in homes suffering from marital discord, and sibling unhappiness.

Our Commonwealth has not the social investigation staff appearing necessary in the Probate Court, who might intervene in the contentious process between libellant and libellee; who might perhaps salvage the marriage; or who

might obtain prime facts of importance to the court, which would otherwise not be brought out in evidence. This is especially true where only one party is represented in court, which is the situation in about three-fourths of all divorce court hearings. In a contested case, it is difficult to discover what is best for the child, in the way of custody and care, merely from the evidence of the marital status. The focus of the case is on the legal cause for divorce, the custody of the child being a collateral or ancillary factor.

Such social service as exists is carried on through probation officers in the criminal divisions of district and superior courts. Case loads are as a rule too heavy for deep therapy; moreover there are few who have been professionally trained, it not being a legal prerequisite. Despite the latter, remarkably good work has been done through the zeal and effort of probation officers. This group is eligible to membership in the National Probation Association, which meets annually. They have a program of education, through discussions of their experiences, and reports on specially written topics, making for a live interchange of ideas. Persons with marital troubles do not as a rule visit probation officers, unless they are referred to them, when on the verge of making a criminal complaint on a domestic relations wrong. Moreover, the officers are too busy for conferences over vexacious marital problems which do not come within the court's province.

Provision should be made for attorneys, who represent

a client in divorce or separate support proceedings, to file a preliminary report as to their role in the matter, and their attempts toward reconciliation.

What steps should be taken by the courts to remedy such deficiencies as exist? How may the resources of other professionals be utilized in the treatment of family problems? For answer the writer states that it would appear that the establishments of boards of conciliation, such as exist in Wisconsin and New York City, or adjustment clinics, connected with the court for purposes of family adjustment, would be productive of immeasurable material benefits to any community; such could diminish much suffering and unhappiness now existing in homes, through better relationships and greater understanding of their behavior, before the situation approaches the range of rupture.

If the value of interprofessional services is recognized by the court, what should its position be with respect to the status of the law? The answer is clear and unmistakable that the court's duty would be to vocalize the need for legislative enactment which would incorporate the services of these into their work.

Our courts' use of interprofessionals--doctors, psychiatrists, psychologists, has been occasional and dependent on the judge's discretion. No especially set-up clinic exists for court referrals; those which are being used are private agencies or state mental hospitals. It seems to the writer

that the present system discourages their use; that a better method could be organized which could provide for specific clinics attached to county seats and to the larger city district courts.

Attorneys in Massachusetts are no different than attorneys in other States as regards the introduction of interprofessionals in domestic court work. They would likely regard this as an invasion of legal rights, coming within the realm of unauthorized practice acts. They have seen a diminishing profession, a reduction of earning capacity by other encroachments in the field of what once used to be their exclusive territory in probate matters--the care of trusts and estates, the appointment of guardians. They, as a group, have had no special training in the field of social jurisprudence. Many are unaware of the existence of social practices in courts of other States in the Union as regards jurisdiction in domestic relations cases. They would undoubtedly be cooperative and helpful, once they had a fuller understanding of the social possibilities, and their contribution in this humanistic field.

Piercing through the conservatism of Massachusetts laws one sees the mechanism which would help to liberalize these statutes. Provision is made for investigations, medical and psychiatric examinations, proceedings for divorce hearings according to equity and ecclesiastical courts. The law is silent as to court informality; as to separation of cases involving

domestic relations issues; there is no present provision for putting these under one central system. Its so-called social service is done through the probation department, which rests on the treatment and prevention of crime, and on the rehabilitation of children because of delinquency. The theory does not include civil actions. There is no verbally expressed philosophy for protecting the security of the family.

The writer sees an urgent need for the creation of a new act specially dedicated to the establishment of an ideal family court. This would require some form of blue print to indicate the pattern, and the placing of the various segments into a fitting relationship with present laws and present court systems. Massachusetts has a county system, which includes probate courts, and a district court system, which embraces several cities and towns; some jurisdictional plan could be evolved from these. Or perhaps a central plan could be made such as has recently been created for juvenile courts in Rhode Island and Connecticut.

Approved,

Richard W. Conant
Dean

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